

# economic Review

## Succession is Over

Negotiations on the succession of the former SFRY began in 1991 under the auspices of the International Community; the talks ended on May 25, 2001 when the Succession Agreement was reached and signed in Vienna, i.e. on June 29, 2001 when foreign ministers of the successor states endorsed the Agreement in Vienna. The Agreement is expected to come into force after being ratified by all five countries - endorsees.

### 1. Elements of the Succession Agreement

**1.1 The original text of the Succession Agreement** is written in the English language. Each successor state received one copy of the endorsed Agreement; another copy was given to Sir A. Watts, a representative of the International Community. The Agreement consists of the preamble and the introductory part which contains general notes with regard to the ensuing text; this is followed by the rights and liabilities of the successor States, including ways of implementing the Agreement. The Agreement will be implemented through a Standing Joint Commission and other specialized bodies set up under the respective annexes. The Agreement will come into force after being ratified by national assemblies, and thirty days after being submitted to the depositor within the UN.

The accompanying annexes and appendices are an integral part of the Agreement.

| Basic Economic Indicators                                   | V 2002   | I-V 2002 | V 2002 | I-V 2002 |
|---|----------|----------|--------|----------|
|   | XII 2001 | I-V 2001 | θ 2001 | θ 2001   |
| Industrial Production                                       | -8.6%    | -1.5%    | -2.2%  | -3.0%    |
| Montenegro  | -36.1%   | -13.2%   | -18.8% | -10.9%   |
| Serbia excluding Kosovo and Metohija                        | -6.1%    | -0.8%    | -1.1%  | -2.5%    |
| Central Serbia  | -8.2%    | -1.5%    | -0.9%  | -0.8%    |
| Vojvodina   | -4.3%    | 0.6%     | -1.6%  | -5.8%    |
| Average nominal net wage - Serbia, in YuM                   | 2.1%     | 71.3%    | 42.0%  | 34.6%    |
| Nominal gross wage - Serbia, in YuM <sup>1</sup>            | 2.4%     | ...      | ...    | ...      |
| Average real net wage - Serbia, in YuM <sup>2</sup>         | -0.5%    | 37.6%    | 24.7%  | 19.8%    |
| Ratio of consumer basket to average net wage                | -0.2%    | -34.5%   | -27.4% | -26.8%   |
| Average paid out nominal pension - Serbia, in YuM           | 4.0%     | 96.1%    | 46.0%  | 49.7%    |
| Average paid out real pension - Serbia, in YuM <sup>2</sup> | 1.4%     | 57.5%    | 28.3%  | 33.2%    |
| Unemployment rate, registered - Serbia <sup>3</sup>         | 3.0%     | 4.9%     | 4.5%   | 3.8%     |
| Number of registered unemployed - Serbia                    | 3.1%     | 5.3%     | 4.7%   | 4.0%     |
| Total number of employees - Serbia                          | -1.0%    | -1.4%    | -1.5%  | -1.2%    |
| Export, USD millions  | -22.5%   | 7.7%     | -12.1% | -6.4%    |
| Serbia  | -20.6%   | 10.1%    | -4.9%  | -2.1%    |
| Import, USD millions  | 2.3%     | 0.2%     | 1.3%   | -1.5%    |
| Serbia  | 3.9%     | 6.9%     | 5.4%   | 3.4%     |
| Money supply (M1), end of period, in YuM billion            | 31.4%    | 116.2%   | 86.2%  | 66.3%    |
| Cash  | 23.7%    | 164.0%   | 104.1% | 95.5%    |
| Deposit   | 29.0%    | 92.8%    | 76.6%  | 49.8%    |
| Real money supply, end of period, in DEM million            | 30.1%    | 112.5%   | 84.0%  | 64.3%    |
| Discount rate, monthly level                                | -31.5%   | -25.7%   | -39.5% | -29.3%   |
| Market interest rate, monthly level                         | -28.9%   | -36.4%   | -43.3% | -30.5%   |
| Retail prices - Serbia                                      | 3.7%     | 25.5%    | 16.2%  | 14.5%    |
| Consumer prices - Serbia                                    | 2.6%     | 24.5%    | 13.8%  | 12.4%    |
| Industrial producer prices - Serbia                         | -0.8%    | 12.0%    | 5.4%   | 5.2%     |
| Medium exchange rate Din/EUR - average                      | 0.9%     | 2.0%     | 1.8%   | 1.3%     |
| Total public revenues - Serbia                              | 4.6%     | 98.9%    | 54.2%  | 46.6%    |
| Social insurance organizations revenues - Serbia            | 0.0      | 104.2    | 48.1   | 52.7     |
| Old-age pension and disability insurance contribution       | 4.7      | 136.9    | 59.2   | 65.7     |
| Health insurance revenues                                   | -11.1    | 52.8     | 22.9   | 28.9     |
| Unemployment insurance revenues                             | 12.2     | 119.5    | 91.4   | 51.5     |

<sup>1</sup> The value of nominal net wages in the period January 2001 - May 2001 are estimated by the gross wage calculation methodology in effect as of June 1, 2001

<sup>2</sup> Deflator is cost-of-living index

<sup>3</sup> The figures includes the employed in socially-owned sector, private sector and SMEs

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## Movable and fixed property

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**1.2 Annex on distribution of assets at BIS Bank, Basel.** The distribution key regarding the distribution of the Basel gold is in agreement with the criterion set for distribution of the SFRY quota in the IMF. According to this criterion, FRY is entitled to 36.52% out of 46,074.78 kg of gold deposited in Basel.

**1.3 Annex A: Movable and Immovable Property.** This term is defined as "movable and immovable property owned by the federation constituted as SFRY". Croatia claimed that the FRY stands to obtain too much since the major part of state-owned movable and immovable property is situated on the territory of the FRY; therefore, Croatia called for all the successor states to be given ownership over three buildings in Belgrade for the purpose of embassies, consular offices and residences. But in the end, this proposal was rejected. Furthermore, Croatia requested division of property of former federal enterprises in the various areas of infrastructure, as well as of the property that used to belong to socio-political organizations. This request was also rejected since this did not concern state-owned property. Macedonia and Bosnia & Herzegovina requested lists of state-owned movable and fixed property that should be distributed according to the territorial principle, which remains to be established, and then to examine whether there is significant inequality in distribution of movable and fixed property in terms of its value. Any considerable inequalities would be followed by the appropriate compensation between the contracting states. At FRY's insistence, however, this proposal was rejected.

Annex A provides for the successor States to be returned particular objects of cultural value which are of special significance for the state in question, in cases where a particular work of art originates from the territory of that state; interested parties are to supply a list of claims before the Agreement is signed.

**1.4 Annex B: Diplomatic and consular property.** The inventory and the value of this property is determined on the basis of the 1992 Report made by independent experts. The list encompasses 123 buildings estimated at US\$ 271.1 million. The request by the Yugoslav delegation for the exclusion of property previously owned by the Kingdom of Serbia (three buildings) was not accepted because of the lack of valid proofs of former ownership. The request to exclude the property bought with the money obtained from the sale of buildings previously owned by the Kingdom of Serbia was also rejected with the explanation that this property was owned by the SFRY, and the distribution of SFRY property was at issue in negotiations. A proposal to take into consideration the value of land given to foreign countries in Belgrade was not accepted, as well.

According to a previously determined distribution key, the FRY is entitled to 39.5% of the value of all real estate. Distribution will be carried out in kind, according to the following pattern: each successor State will obtain certain pieces of real estate in every appropriate geographical area and in the OECD countries, based on the predetermined percentage. A temporary and partial distribution of five pieces of real estate was also prescribed, while the Yugoslavian side was given an opportunity to make the first selection. This exception in implementation of the Agreement prior to ratification aims at achieving practical progress in the process of succession, and at confirming the commitment to following through with the succession.

**1.5 Annex C: Financial assets and debts.** This is the hardest and the most complicated issue. For the FRY, the main problem is the date of the actual succession, i.e. the starting date for accounting financial balances. The Draft of the Agreement set December 31, 1990 as a referential date, while during negotiations several alternative dates (June 30, 1990, December 31, 1991 and April 27, 1992) were considered as potentially referential. This is very important for the Yugoslavian side, primarily with regard to the distribution of foreign currency reserves.

After intense debating, the Yugoslav approach of "distributing property which physically exists at the time of negotiations" was accepted. In this way, the date of succession was avoided, along with the return to the past, which would have led Yugoslavia into a very difficult financial position. At the same time, the date of succession was set separately for each country as the date when independence was declared.

After the debate was over, Annex C determined the following forms of financial assets as subject to distribution:

- The remaining monetary gold valued at US\$ 70.18 million on March 31, 2001.
- The frozen foreign currency assets in foreign bank accounts in the amount of US\$ 369.7 million; the first amount to be deducted from this sum refers to US\$ 84.52 million for the Military Service, in whose account are assets that belonged to enterprises from the SFRY. The remaining assets will be distributed among the successor States according to the predetermined key;
- The assets deposited in mixed banks, estimated at US\$ 645.55 million according to the NBY accounting data. The real statement of account is still unknown. The Yugoslav side did not have access to the accounts in mixed banks and agencies in foreign countries during the period of sanctions; therefore it supplied the accounting data and insisted on the formulation "available assets for distribution", which was included in the Agreement. The assets in mixed banks and agencies in foreign countries were additionally discussed under the Commission for Implementation in Annex C because mixed banks subsequently supplied the information to the effect that there is almost nothing left from these deposited assets. The successor States will have to check up on each mixed bank.
- The gold upon the decision of the Tripartite Commission valued at US\$ 0.343 million on March 31, 2001.
- The balance of clearance accounts in the amount of approximately XSU 1.250 million, whereby the major part refers to the claims from Russia.
- The 27% share of the SFRY in the shareholding capital of JUBMES bank prior to its transformation into a commercial bank.

At the same time, the SFRY debts, which had not been previously divided, were determined:

- Liabilities of the Kingdom of Yugoslavia on the basis of loans taken between two World Wars in the amount of US\$ 9.5 million
- The so-called "Libyan debt", on the basis of SFRY borrowing from Libya for purchase of oil, in the amount of US\$ 105 million. The former Yugoslav regime was generously ready to pay out the total debt, but having included it into the succession matters, Yugoslavia saved at least US\$ 65 million.

The only issue that remained unresolved is old hard currency savings. Two proposals are under discussion:

- The distribution by territorial principle, meaning that each successor State would take on liabilities for savings kept in banks that operated on its territory;
- Distribution based on the principle of so-called head office, meaning that the liability for repayment would be taken on by the state of domicile of the saving bank's head office. This issue will be settled with mediation of BIS Bank, Basel.

**1.6 Annex D: Archival Records** - The accepted solution is that archival records will remain where they are found (except for those foreseen for handing over to a particular successor State in compliance with articles 3 and 4 of this Agreement) unless a different unanimous agreement is reached within 6 months after the Succession Agreement comes into effect.

**1.7 Annex E: Pensions** - The accepted formulation is that each country will take responsibility for regular payment of legally justified pensions, which it used to finance before the disintegration of the SFRY, regardless of nationality, citizenship, residence or domicile of the beneficiary. Furthermore, each successor State will be accountable for regular payment of pensions to its citizens who used to work as members of civil or military staff in the SFRY, regardless of their current residence or domicile, if those pensions were financed from the federal budget or other SFRY assets.

**1.8 Annex F: Other rights, interests and liabilities** - These issues are regulated in two articles of the Annex. Especially significant are previous and future disputes and litigations concerning the SFRY. The successor States are obliged to inform one another about it. Equal distribution of costs of such disputes is not prescribed, but this issue is to be discussed and settled by the Standing Joint Commission.

**1.9 Annex G: Private property and acquired rights** - The solutions of this Agreement provides the legal ground for numerous SFRY citizens to realize their property, contracting, intellectual and tenancy rights on the territories of the successor States without discrimination of any kind. This is especially important for about 40,000 apartments of Yugoslavian citizens in Croatia.

## 2. Effects of Succession

For the evaluation of the overall effects of following through with the succession among the SFRY successor States according to the endorsed Agreement, direct and indirect effects that will come about after ratification and practical implementation of this document should be borne in mind.

**2.1 Indirect effects** - Adopting the Succession Agreement, FR Yugoslavia achieved numerous positive effects that will be of great significance for its relations with neighboring countries and with the International Community, under present circumstances and in the future:

- a. The strengthening of political credibility
- b. The return into international financial organizations
- c. The normalization of relations with SFRY successor States
- d. Institutional protection of the interests of Yugoslav nationals and legal entities in other successor States

**2.2 Direct effects** - The Succession Agreement provides for many solutions with direct effects that will be visible soon after ratification, while others will yield results in the long run. The following solutions are of special importance for the FRY:

- a. A unique date of succession was avoided;
- b. What was found on the territory of one successor State is preserved in that State;
- c. Distribution of available assets and liabilities;
- d. Return to the past was avoided;
- e. Control over the work of the NBY over last twelve years was also avoided;
- f. Assets and claims of SDPR are not subjected to succession;
- g. Assets and claims of the Military Service are not subjected to succession;
- h. Claims, investments and proceeds of the JUMBES Bank are not subjected to succession. Only the 27% share of the SFRY in the share capital of this bank will be distributed among successor States;
- i. The successor States will distribute only the assets situated in foreign countries.

The Succession Agreement might not be perfect, but without any doubt, it provides the best possible protection for Yugoslav interests under current circumstances. The Agreement also protects the interests and rights of citizens, enterprises and the state. Furthermore, this Agreement represents final division among the former Yugoslav republics and provides conditions for the establishment of new relations among the countries that emerged out of the disintegration of the SFRY.

**Archives and  
pensions**

**Private property and  
acquired rights**

**Indirect effects**

**Direct effects**

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## Macroeconomic Trends in the First Six Months and Forecasts for the Year 2002

# Characteristics of Macroeconomic Trends in the First Six Months Of 2002

**Macroeconomic stability:** In the first six months of 2002, the effects of implemented reformist changes over the last year and in the first months of this year were notable. The reform of the system is reflected in the changed and relatively completed legal framework in the areas of public finance, international economic relations, monetary policy, the banking sector, privatization, and in fundamental changes in the field of labor relations. Coupled with liberalization of foreign trade and liberalization of prices (except prices of electricity and public utilities that are projected for gradual liberalization), and efficient administration of monetary aggregates and public finance, conditions have been created for the establishment of macroeconomic stability in the country. Total growth in retail prices in Serbia, not including Kosovo and Metohija, in June 2002 was 4.3%, compared to December 2001, implying a 0.7% growth per month. The consumer price index in the surveyed period displayed a slower increase of only 3.0%, or 0.49% per month.

The cited figures confirm the macroeconomic stability that has been achieved in Serbia, which is a basic precondition for development of entrepreneurship and investment initiatives, as the most important supports for efficient implementation of the necessary structural and microeconomic reforms.

**Production and services:** The available data, which generally does not cover the private sector on a monthly basis, indicates a mild drop in the volume of production and services in real terms, in the first six months of 2002, year-to-year. In the period of January - May 2002, compared to the same period in the previous year, the level of industrial output was down by 0.8% in Serbia and by 1.5% in Central Serbia, while in Vojvodina it increased by 0.6%. From the point of view of intended consumption, growth was achieved in the manufacture of capital goods (6.6%); the manufacture of intermediate goods registered a mild drop (-0.8%) while a more substantial decrease was recorded in the manufacture of consumer goods (-3.3%). The de-seasonal series of industrial production, however, displayed a notable upward trend per month in 2002, whereby the most significant de-seasonal growth was recorded in April (3.0%) and May (3.9%), compared to the 2001 average. A permanent upward trend of the de-seasonal index in the first months of 2002 was also registered in construction, tourism and transport.

Retail trade turnover displayed constant growth in the first six months of 2002. The value of the total retail trade turnover in this period was nominally up by 44.0% i.e. 14.7% in real terms year-on-year. Enterprises project further growth in retail trade turnover (by about 5% in June, month-to-month, or 4.5% in real terms). This implies higher total volume of economic activities in the formal sector including all types of ownership than can be concluded based on the data that does not cover the formal private sector. This is also supported by the data on real growth in value of the hotel industry turnover, excluding the private sector, in the first quarter of 2002 year-on-year (by 3.3%), followed by a real increase in the value of realized construction works in the first four months of 2002, compared to the same period of the previous year (by 11.3%), and by the data on the achieved real growth in tourism. It is clear that total economic activity in the formal sector increased in real terms in the first six months of 2002, year-to-year. A decrease in the volume of activities, however, measured in the hours of effective work in construction, for example, or in the number of arrivals and tourist nights in tourism, results from the restructuring or disappearance of particular entities i.e. companies in the socially-owned sector that is statistically monitored on a monthly basis. This is supported by data on the permanent drop in the number of employed in the socially-owned sector of these activities. Employment in the socially-owned manufacturing sector is also decreasing.

All of these imply a need for better and faster adjustment of the system of evidence and monitoring in the transition period in order to provide the instigators of the reform process with a realistic picture of real trends in the field of total production and services, which is the basic **assumption** for a more active approach in designing new market instruments of economic policy, adjusted to the new macroeconomic environment. This is very important both for efficiency of reforms and for informing the local and international public about the real results of reforms in order to provide security in decision-making related to entrepreneurship and investments.

**Labor market:** Structural changes marked the labor market in Serbia over the previous six months. The number of employed in the socially-owned sector was decreasing from month to month. On the other hand, employment in the private sector rose. Employment in small-sized enterprises is expected to increase as well. In the period from January-May 2002, employment in the socially-owned sector was down 5.0%, year-on-year; in small private businesses and craft shops it rose by 11.6%, while the increase in employment in small-sized enterprises is estimated at 6.0% at least. Thus, in the first five months of 2002, the proportion of the employed in the socially-owned sector in total employment was confined to 72%, while the proportion of employment in small shops increased to 18.0% and in small enterprises it increased to 10.0% in total employment. A more intensive privatization process is projected to continue the upward trend in employment in the private sector and

*Statistics lag behind  
in the monitoring of  
the transition process*



small-sized private enterprises and with a decrease in employment in the socially-owned sector. There is no precise data on employment in small enterprises, but it is estimated to increase by at least 3.35% in March 2002, relative to September 2001. With regard to this figure, total employment in the first five months of 2002 was down 1.4%, year-on-year. If the number of employees in small enterprises were higher, the total employment in Serbia would remain at the same level. This indicates that the implemented restructuring of banks and of a number of enterprises in the surveyed period did not affect a decrease in the number of jobs, but that merely the restructuring of the labor force occurred.

The previously advanced hypothesis is confirmed by the data on increase in the number of new jobs, and on the significant rise in registered demand for labor in the first five months, relative to the same period in the previous year (from 78.0% to 85.0%). Fluctuation of labor also grew. The share of direct transfer from one working post to another in the total new employment in the first five months of 2002 was 35.4%, relative to 30.5% in the same period of the previous year.

Registered unemployment increased in the period from January - May 2002, reaching the average figure of 799,341 persons, which is up by 5.3%, year-on-year. With regard to the registered unemployment at the end of May 2002, it was 804,572 persons, displaying an increase by 4.5%, relative to May 2001. Assuming that increase in employment in small enterprises was well estimated, the official unemployment rate in the period from January - May 2002 was 27.9%, which is up by 4.9% relative to the same period during the previous year (26.6%). If the employment growth rate in small enterprises were faster, the registered unemployment rate would be lower.

The number of unemployment allowance beneficiaries rose by 27.7% in the first quarter of 2002, year-on-year. It is interesting that the proportion of those who lost their jobs as redundancies among the total number of unemployment allowance beneficiaries in the first quarter remained at the level of the first quarter of 2001 (54.5% in 2001, i.e. 54.4% in 2002). This implies that those who lost jobs in lay-offs after restructuring in the banking sector and other enterprises have largely chosen other options which they were offered in place of unemployment allowance.

**Characteristics of domestic demand:** Retail trade turnover trends imply relatively high total growth of domestic demand in the first six months of 2002, year-on-year. This is further supported by the data of 71.3% growth in the average nominal net wage in the period from January - May 2002, compared to the same period in the previous year (calculated according to new methodology). Real growth in nominal wages in the surveyed period averaged 37.6%. The purchasing power of a wage considerably increased, measured according to the ratio of the consumer basket of food and beverages in proportion to the average nominal wage, which was reduced from 2.2 in May 2001 to 1.34 in May 2002. The average real net wage in the first five months of 2002 was up by 19.8%, compared to the 2002 average.

It is necessary to underline, however, that after last year's growth in real wages, which considerably exceeded estimated GDP growth, the trends in wages in the first six months of this year were largely adjusted to the trends in economic activities as a whole. The average real wage in May 2002 was down by 0.5%, relative to December 2001. As far as the consumer basket of food and beverages is concerned, the purchasing power of employees remained at the same level, with slight variations in the first six months of 2002.

The average pension paid out in the period from January - May 2001 was at a very low level, which resulted from the longstanding irregular current adjusting, prescribed by the law under the former regime. After the new Government assumed office, pensions have been regularly adjusted in accordance with the law, but the accounting of pensions is still inaccurate. Both circumstances affected considerably faster real growth of the averaged paid-out pension (57.5%) in the period January - May 2002 year-on-year, compared with real growth in the average paid out wage in the surveyed period.

Changes in regulations in the area of pension adjustment that came into effect as of January 2002 considerably decelerated changes in pensions. The averaged pension paid out in May 2002 by the PIO Fund of the Employed was YuD 5,966, which is at the level of 70% of the net wage paid out in that month. The average pension paid out in May was up 1.4% in real terms, compared to December 2001, or 28.3% compared to the 2001 average. The purchasing power of the average pension in the first six months of 2002 remained at approximately the same level.

In view of the aforementioned indicators, it could be concluded that the real standard of living of employees and pensioners considerably improved in the first six months of 2002, year-on-year. Stagnation trends with some monthly variations in the course of this year, however, resulted from an attempt to adjust trends in real wages with the trends in productivity, and real trends in pensions with legal regulations. According to the law, pensions generally depend up to 50% on nominal wage trends and current productivity, and up to 50% on the achieved increase in the cost-of-living index.

**Export, import and foreign trade balance:** The value of commodity exports in Serbia in the period of January - May 2002 year-on-year increased by 10.1%, while the value of commodity imports over the same period rose by 6.9%. Export value growth resulted in part from an increase in exports of agricultural staples; also. Although exports of manufactured products largely stagnated, there were several areas that considerably contributed to the increase in the value of commodity exports, in particular the manufacture of food, chemicals and machinery. The drop in export value of our main exporting products i.e. garments, leather and footwear and non-ferrous metals, compared to the first five months of the previous year may appear as alarming.

The foreign trade deficit slightly decreased in the surveyed period, compared to 2001. This resulted from faster growth in exports, compared to imports. The achieved growth rates are still lower than projected at the beginning of the year (the Federal Government projected a commodity export growth rate of 14% and commodity import growth rate of 8.8%, while the IMF projected growth rates of 12% and 15%, respectively).

*Growth in new employment with increased fluctuation of labor*

*Significant improvement of the purchasing power of wages and pensions in the first six months of 2002, compared to the same period in 2001*

*Adjustment in trends of real wages and productivity*

*Commodity export value growth and the decrease of the foreign trade deficit*

### *Further adjustment of monetary policy instruments to the conditions of the market economy*

**Monetary policy:** The National Bank of Yugoslavia continued to adjust the instruments of monetary policy to market economy conditions in 2002. In line with its monetary policy targets, the NBY made a series of new decisions which took effect on April 11, 2002. Firstly, a general reserve requirement rate was set at 20% on both dinar and forex deposits. Reserve requirements on dinar deposits are allocated in dinars, whereas requirements on forex deposits are allocated in foreign currency. The former reserve requirements rate was 24.5% and was applied on dinar deposits only. The reserve requirements on dinar deposits should provide the NBY with better control over the money supply, since certain banks used to avoid reserve requirements on dinar deposits through misreporting in their balance sheets, i.e. displaying dinar deposits as deposits in foreign currencies.

Another newly introduced measure concerns subscription of treasury bills with a longer maturity period of 45 and 60 days, while subscription of bills with a 10-day maturity is no longer available. Furthermore, banks have the opportunity to transfer their excess liquidity to an account with the NBY. They may also apply for loans intended for management of daily liquidity, subject to foreign exchange depositing with the NBY, or otherwise collateral in the form of NBY bills. These measures should foster open market operations as a system for regulating the money supply, which is much more efficient and immanent to a market economy than direct crediting of banks.

Money supply M1 at the end of May 2002 rose by 31.4%, compared to the end of 2001, reaching an amount of YuD 84.85 billion. The primary issue in 2002 was based on foreign exchange transactions in the amount of YuD 10.78 billion and crediting of the budget of the Republic of Serbia in the amount of YuD 3.42 billion.

**Public Finance:** In the field of fiscal policy in 2002, the projected real budget is higher in real terms than in 2001. The deficit achieved in 2001 was GDP 1.7% according to the latest estimates, while for 2002 it is projected at GDP 5.7%. The increase of the deficit by over 4 GDP percentage points is the result of an increase in payments of foreign debts (GDP 1.6%), of the costs of restructuring enterprises and banks (GDP 1.2%) and the costs of projects financed by foreign countries (GDP 1.2%). Financing of the deficit is planned through foreign donations, foreign loans and privatization proceeds, while the financing of deficits from NBY credits is confined to less than GDP 1%.

The 20% sales tax on food, medicines from the priority list and public utilities was cut as of January 2002.

Further rationalization of public spending has been planned for the year 2002; this is to be achieved through the merging republican and federal offices whose competences overlap to a great extent, and through new distribution of taxes (20% from excise duty and 25% from sales tax assigned to the federation) which should motivate federal officials to combat smuggling. As in the previous year, the priorities set by the Serbian Government with regard to public spending are education, health and the judiciary.

One of the key points of the fiscal policy for 2002 is fiscal decentralization which has been made possible through adoption of a series of laws in March 2002 (the Local Self-Management Law, the Law on the Volume of Assets and the Participation of Towns and Municipalities in Personal Income Taxes and Sales Taxes, the Budgetary System Law, as well as the omnibus Law on Transfer of Jurisdictions to Vojvodina). Together, these laws are a significant step in the reform of public finance since they assign local organs a higher degree of independence in administration, a wider fiscal independence and wider financial responsibility and transparency.

According to the Budgetary System Law, the budgetary system is composed of the Republic, local authorities and organizations of compulsory health insurance. This Law also introduced the institution of the treasury, which allows integrity of the budgetary system and equal legal basis, budgetary classifications, budgetary process, budgetary documentation for drafting budgets and financial plans, budgetary accounting, criteria for budgetary control and auditing, and statistical reporting. The Public Procurement Law is expected in the upcoming period. This law should provide for better transparency of public spending.

Other significant points of fiscal policy in 2002 include a budget for agriculture (projected allocation for an agricultural budget is YuD 8 billion), a social program, reconstruction of roads, investments in the EPS and the repayment of old foreign currency savings and of the fraudulent Loan for the Economic Revival of Serbia.

**Social Policy:** The reform process as a whole is aimed at removing social policy from enterprises and entirely taking over responsibility for the social situation in the country by the Government. The changes carried out in the area of fiscal policy and in the Budget this year have largely created conditions for a social policy suitable to a market economy.

From the beginning of this year a new pattern of indexation of social benefits has been applied. Instead of the former indexation on the basis of wage trends, as of January the indexation of benefits has relied in part on wage trends and in part on the consumer price index.

A lot has been done on establishing new criteria for identification of the neediest families and establishing the poverty line on the basis of real expenditures for living necessities.

The preparation of a national strategy for combating poverty is underway. This strategy has a developmental approach in resolving this very important issue with regard to the characteristics of poverty in our country.

### **Privatization and Restructuring**

Over 7,000 enterprises are earmarked for privatization by the end of 2005. After successful tender sales of three cement factories, the first public auction was held on April 3, 2002. Out of nine offered enterprises, only three were sold (for YuD 12.7 million), due to the lack of interest among buyers for the other six. The reason for such lack of interest lies in the overestimated value of the offered enterprises, which was calculated by a statistical method, not by analysis of profitability. Old evaluations will not be used any further, but only market prices. Another reason for the failure of this first auction is that potential buyers

### *Initiated process of fiscal decentralization*

### *National strategy for combating poverty - developmental approach*

were not sufficiently informed, and because of fears of examination of origin of the assets with which the enterprises would have been bought. At the second auction held on May 24, five enterprises out of 14 offered were sold, including the enterprise "Diork", one of those that were not sold in the previous auction. The total proceeds exceeded YuD 144 million. A tender sale requires time and a strict procedure, which is proved by the fact that no enterprise has been sold in this way for six months after the sale of the three cement factories. The tender sale of 80 enterprises is planned for year 2002, but since no sale has been accomplished so far, this target will likely not be reached. So far, four projects of the Agency have been formed, as well as twelve pools in various areas: the companies of pharmaceutical and chemical industries, the manufacturers of spare parts for automobiles, metal processing enterprises, the food processing industry, manufacturers of construction materials, the textile industry, juice producers, etc. A total of 25 bids were announced in the media.

One thousand enterprises have been privatized under the old privatization model, which involved broad issuance of shares; these enterprises made up the most developed part of the Serbian economy. The accounting value of the enterprises privatized under the Ownership Transformation Law is EUR 2.64 billion. The portion of capital that according to law belongs to the Share Fund and Old Age Pension and Disability Insurance Fund is EUR 800 million. All shares of these enterprises should be updated in the Temporary Register in order to annul irregular sales (e.g. whenever there were no written proofs of transaction - it happened that shares were traded without their owners' knowledge). Wherever there are written proofs which confirm free will on the part of the buyer and the seller to transfer ownership, such changes will be recorded in the Temporary Register. If registration is not pursued within the defined, reasonable time frame, unregistered shares will be transferred to the Share Fund. The decision whether the part of the capital held in the Share Fund will be traded on the Stock Exchange or sold to financial investors will be made from case to case. Several minority blocks of shares have been already realized at the auction sale with success, except for the case of the problematic sale of Apatin Brewery. Thus, a financial market has started developing. The time of trading dominated by commercial bills of companies on the Belgrade Stock Exchange is behind us.

The present pace of privatization does not correspond to the projected terms. The first reason for tenders and auctions to be late refers to inaccurate legal documentation in Serbian enterprises. Especially problematic are the enterprises which possess considerable real estate, because of the frequent lack of licenses for their construction. The prices of enterprises at auctions were too high because of inadequate accounting standards for evaluation of capital which were applied in the enterprises. However, part of the blame should go to the state administration, also. Either the privatization concept is too ambitious and demand for our enterprises has been overestimated, or the Agency is not organized well and therefore is slow in carrying out plans. In order to speed up the privatization process, the Ministry for the Economy and Privatization and Jugobanka signed a protocol on cooperation in establishing a privatization fund "Pocetak za imetak", which would support potential buyers in the privatization of socially-owned enterprises through auction sales. This will increase demand for enterprises in future auctions because the issue of a deposit will no longer present an obstacle for domestic investors. Another measure implemented to boost privatization is the Government's Decree adopted on May 16. According to this Decree, all liabilities of enterprises towards the state made until the end of the year 2001 are to be transferred into the equity of the state. This decision will not only accelerate privatization, but will also strengthen financial discipline.

UNMIK plans to undertake privatization of 350 socially-owned and 65 public enterprises in Kosovo and Metohija. The projected privatization model will transform old enterprises into new ones which will be relieved of all liabilities towards the state and towards all other creditors, in order to make them more attractive for investors. The "Kosovo Trade Agency" will be in charge of sales. This Agency consists of six members, three as representatives of the international community and three as representatives of local communities. The Serbian Government strongly opposes this model, considering it unfair that claims by Serbian enterprises are disregarded, while at the same time the Republic of Serbia is obliged to settle international liabilities related to Kosovo & Metohija.

According to estimates made by competent ministries in the Serbia Government, 59,500 workers will lose their jobs on the basis of restructuring of 39 large enterprises in 2002. The enterprises that are to undergo restructuring cannot initiate privatization processes for several reasons:

- a) Heavy indebtedness, with liabilities exceeding assets, i.e. the value of capital;
- b) Redundant labor, which results in low productivity and negative cash flow, because wages are paid out to employees who do not contribute to positive business performance of an enterprise;
- c) Inadequate organization at both micro and macro levels, with diversified programs that should not have been put together into one organizational unit;
- d) Outdated or worn-out production facilities.

Restructuring within the privatization process does not involve activities in changing production programs, investments of fresh capital etc. These activities will be undertaken by the future owner according to his/her own business strategy. Restructuring will take 12 to 36 months and the assets necessary for this process will be provided from foreign donations.

Restructuring should be implemented in three stages:

The **first stage** includes preparatory activities of identifying, analyzing and distinguishing attractive independent business units, and preparation of their financial reports. This should be followed by initial talks with creditors and by the settlement of all disputed claims. Then it will be necessary to make a two-year business plan for each unit and to estimate its value. Any action directed towards debt enforcement taken by the creditors during the restructuring process will be prohibited.

### *Necessity of recording all shares in the Temporary Register*

### *Privatization in Kosovo & Metohija*



### Three stages of restructuring

The **second stage** includes negotiations with creditors aimed at reprogramming existing debts. Creditors can fully or partially write off debts or transform them into a share of privatization proceeds. Such conversion of debts is not provided for creditors with major private ownership in order to prevent fictitious claims. This stage used to include the adoption of a social program in cooperation with trade unions. But on March 7 the Government of Serbia adopted a social program for employees laid off in the process of restructuring of enterprises and preparations for privatization, and on the basis of bankruptcy and liquidation. This resolved an ethical problem of a case-by-case approach in applying the social program in different enterprises. Up to now, the social program has been determined by the political risk of lay-offs, which is always substantial when giant enterprises are concerned, while employees in smaller companies have been treated with less attention; this is unacceptable in an ethical sense because all redundancies should be equal in their status.

The **third stage** includes implementation of the restructuring strategy which is set out in the Restructuring Program, and the sale of capital through public auction or tender. All legal transactions undertaken within the restructuring process would produce a legal effect when capital or property is sold through one of the prescribed selling methods.

Out of the total of 39 enterprises that are on the list for restructuring, 19 enterprises are projected to start this process in 2002. *Zastava* and *Bor* have restructuring programs already; the restructuring program for *Zorka Sabac* will be completed, and then implemented with financial assistance from USAID. The restructuring programs for *IMT*, *Zmaj* and *FAP*, as well as for 15 other enterprises are under preparation; these programs will be financed by the European Agency for Reconstruction. *Zastava* is currently in the second stage of restructuring.

### Cooperation with International Financial Organizations

The fourth installment of the stand-by arrangement with the IMF was withdrawn in May. At the same time, a three-year EEF (Extended Fund Facility) arrangement in the amount of US\$ 829 million was approved. These funds will be withdrawn in 13 installments and are intended for bridging the gaps in payment balances and for currency stabilization. The medium-term character of this agreement, by which our Government committed to sustain macroeconomic stability and further implementation of reforms, should have a positive impact on attracting investors and on reducing the risk of investing in our country. It is also important that the approval of this arrangement means putting in effect a 51% write-off of the debt to the Paris Club of creditors, while the remaining 15% will be written off after successful termination of the agreement with the IMF.

As of the beginning of this year, the World Bank approved several credits, such as the Structural Adjustment Credit (SAC) in the amount of US\$ 70 million, the Private and Financial Sector Adjustment Credit (PFAC) in the amount of US\$ 85 million, as well as the credit intended to further the educational system in Serbia in the amount of US\$ 10 million. All these credits were approved under the IDA conditions with the term of payment of 20 years and a 10-year grace period.

### Free Trade Agreements

Having signed the Memorandum on Understanding in June 2001, seven countries of Southeastern Europe, later joined by Moldavia, committed to concluding mutual bilateral free trade agreements by the end of this year, which would eventually result in the establishment of a free trade zone. As far as our country is concerned, free trade agreements have been previously signed with Macedonia (revised later) and Russia; as of the beginning of 2002, agreements have been concluded with Bosnia & Herzegovina and Hungary. Negotiations with other SEE countries are underway, as well as with Slovenia. All of these will foster trade cooperation with neighboring countries. This cooperation has considerably progressed recently, and countries in transition have become the main exporting market for our country. The strengthening of economic cooperation is not only important for economic recovery and for growth of these countries, but is also a prerequisite for accession to the EU.

### Exchange Rate and Foreign Exchange Reserves

Several legal acts that liberalize foreign currency transactions have been adopted as of the beginning of 2002; in May 2002, the IMF recognized convertibility of the dinar in all current transactions. This should bring about further remonetization and improvement in the competitive position of our economy. Namely, a freely formed exchange rate and facilitating of current financial transactions with foreign countries should be of assistance in the process of the restructuring of the economy, enabling easier identification of sectors and enterprises that are competitive with their prices on international markets.

Appreciation of the real exchange rate has continued over the first months of this year. This, however, should not have negative implications on our country's foreign trade since our surveys indicate that the exchange rate was not a significant determinant of the value of exports and imports over the previous period. Hence, deliberate forcing of substantial depreciation of the dinar would not result in an increase in exports and a decrease in imports. Moreover, real exchange rate set by the market is an important element in the restructuring of our economy because it can show activities that may be competitive in terms of exports.

### Foreign Direct Investments

In the first quarter of 2002 no considerable inflow of foreign direct investments was recorded - 195 contracts on foreign investments were concluded in the total value of US\$ 37 million. This could be explained by the fact that there were no tender sales during the

### Further liberalization of foreign currency market transactions



surveyed period, while on the auctions held in this period, enterprises were largely bought by domestic investors. In the meantime, the privatization process was initiated with several chemical manufacturers in whom large international companies are interested. Hence, privatization can be expected to contribute greater inflow of foreign direct investments as early as several months from now.

With regard to Greenfield investments, as long as the procedures for opening an enterprise remain complicated, lengthy and expensive, foreign capital cannot be expected to be greatly interested in this kind of investment. Unlike last year, when caution among foreign investors was associated with political risk and macroeconomic stability, the main problems now are insufficiently developed market economy institutions and inefficient organization and functioning of administrative offices. This problem must be resolved promptly since a congenial environment for initiating and running SMEs is a key element in affirming entrepreneurship, initiating a new generation of employment and in economic development of a country in general. An important step in this regard was the adoption of the Law on Foreign Investments in January, and the announced simplification and acceleration of procedures for initiating enterprises and obtaining other necessary licenses.

## Forecasts of Macroeconomic Trends until the End of 2002

In this section we will present forecasts of key macroeconomic variables for the Serbian economy until the end of 2002. The forecasted variables are calculated on the basis of econometric assessment of three groups of models:

- One-dimensional model of time series
- Vector auto-regressive models
- Structural models specified with regard to the results of causality tests.

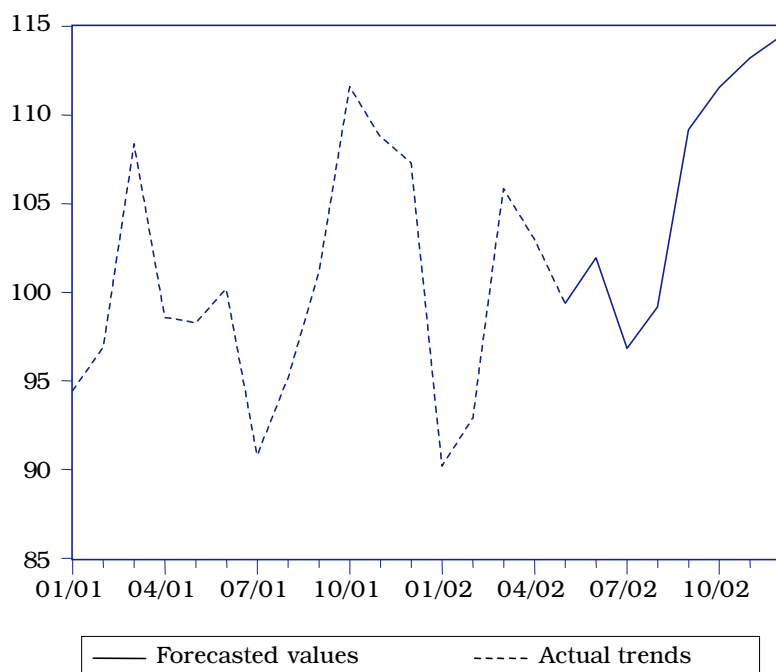
The time series were surveyed in the period between January 1995 and April 2002. One of the main characteristics of our time series in the given period are structural collapses, resulting from three groups of factors. The first group refers to changes in business conditions during the 1999 bombardment. The second group is related to political changes in October 2000 and enormous changes in the macroeconomic environment. The third group includes changes in the methodology of calculating particular variables. That is why some forecasts were obtained in combination with assessments from different samples. Additional restrictive elements in the analysis of time series are inadequate monitoring of activities in the private sector by official statistics which, as a rule, do not encompass the private sector in the field of manufacturing and services at a monthly level, but only at an annual level.

The forecasted results could be considered valid only if no significant structural changes happen in the upcoming period.

### *Production and Services*

According to the analysis of the dynamic of industrial production index, the average production growth in 2002 is estimated at 2%, compared to 2001 (graphic 1). The forecasting of de-seasonal values is a thankless task, for the process of distinguishing seasonal components must be based on a longer period of time, while the nature of seasonal fluctuations of the industrial production index changed over the given period.

**Chart 1 - Trends in the Industrial Production Index (average 1995 = 100)**



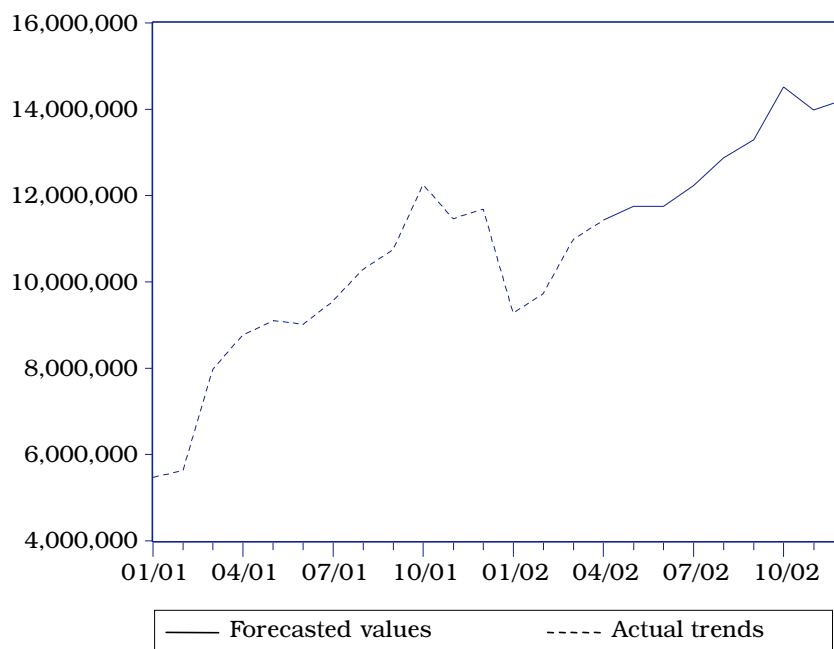
**Forecasts:  
Econometric  
evaluation of three  
groups of models**

**Increase in industrial  
production by 2.0%**

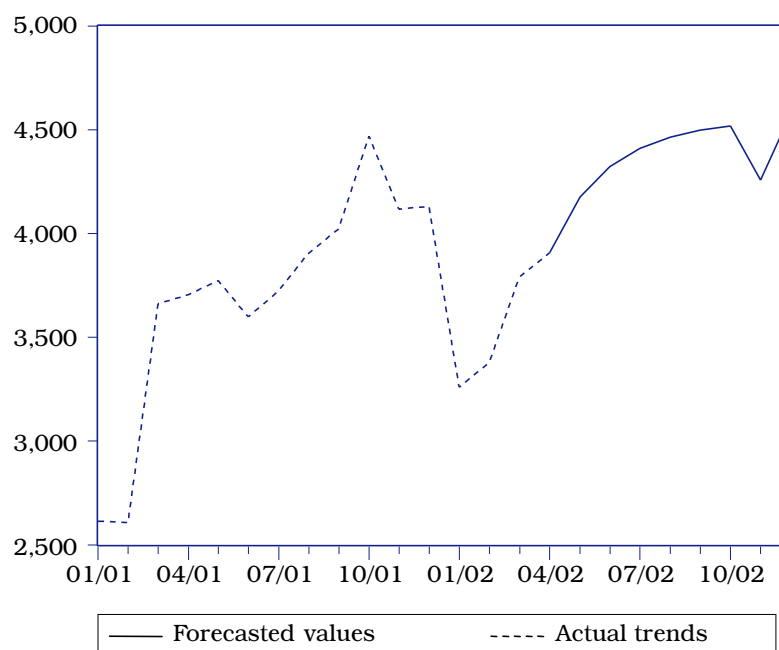
The dynamics of agricultural output are assessed according to the data on the state's authorized purchase of agricultural staples. Although these figures need not correspond to the real level of agricultural output, our estimation is that the level of agricultural output in this year will be lower by 5.0%, compared to the previous year.

Retail trade turnover (in the socially owned sector) is a function of total wages and the industrial production index. The real level of the retail trade turnover is defined through trends in real wages. According to the assessed equations, it could be concluded that retail trade turnover also depends on other factors not included in this quantitative analysis. The average nominal growth in retail trade turnover in 2002 is estimated at 30%, compared to 2001, i.e. at about 14.0% in real terms.

**Chart 2 - Trends in the Nominal Retail Trade Turnover**



**Chart 3 - Trends in the Real Retail Trade Turnover**



The volume of construction work is monitored on the basis of the realized effective hours of work in the socially owned sector. The analysis of this variable indicates a drop in construction volume by 6.0% on the average, year-on-year. This evaluation entails correction with regard to assessment of construction works realized in the private sector, as well as to real fluctuation of the value of realized construction works. Given the trends in the latter variable over the first four months of 2002, year-on-year, real growth in this field in 2002 could be estimated at between 4.0% and 6.0%.

According to time series trends of the number of tourist nights, the average growth in tourism is estimated at about 1%. However, the real value of turnover in tourism and the catering industry in the first six months of 2002 implies faster GDP growth in tourism and the catering industry by about 4.0% to 6.0% in 2002, relative to 2001.

*High real growth in retail trade turnover*

*Real growth in overall construction activities*

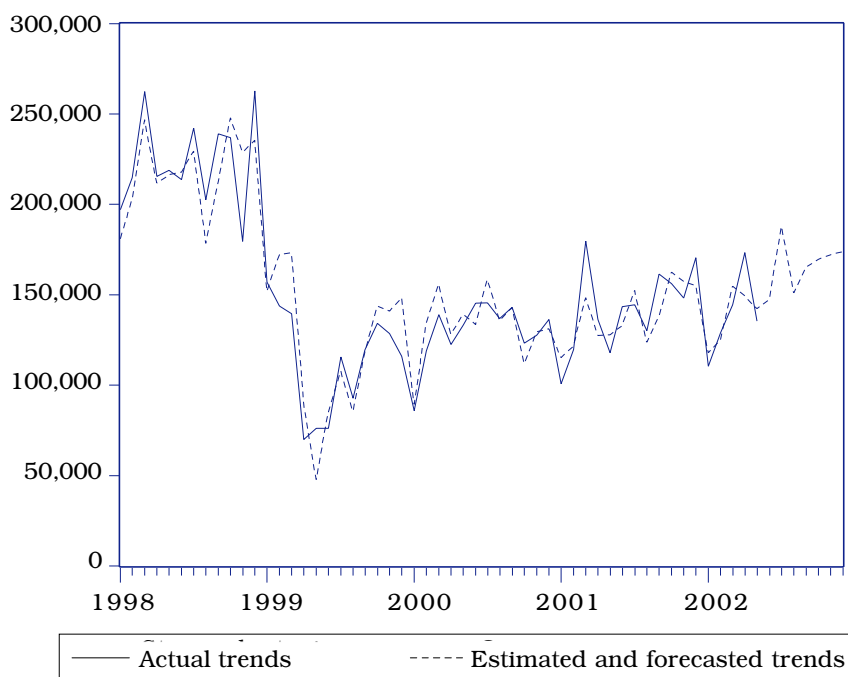
## Foreign Trade

The trends in commodity exports are predominantly determined by trends in production, i.e. by growth in work productivity. A drop in the variability of trends of the real exchange rate has a positive impact on export growth. On the other hand, trends in import and production are mutually dependant.

There is a long-term relation between commodity exports and imports and the real exchange rate, in which the real exchange rate appears as a SLABO exogenous variable relative to corresponding parameters. According to the estimation of these parameters, growth in the real exchange rate has a more significant impact on commodity imports than on commodity exports.

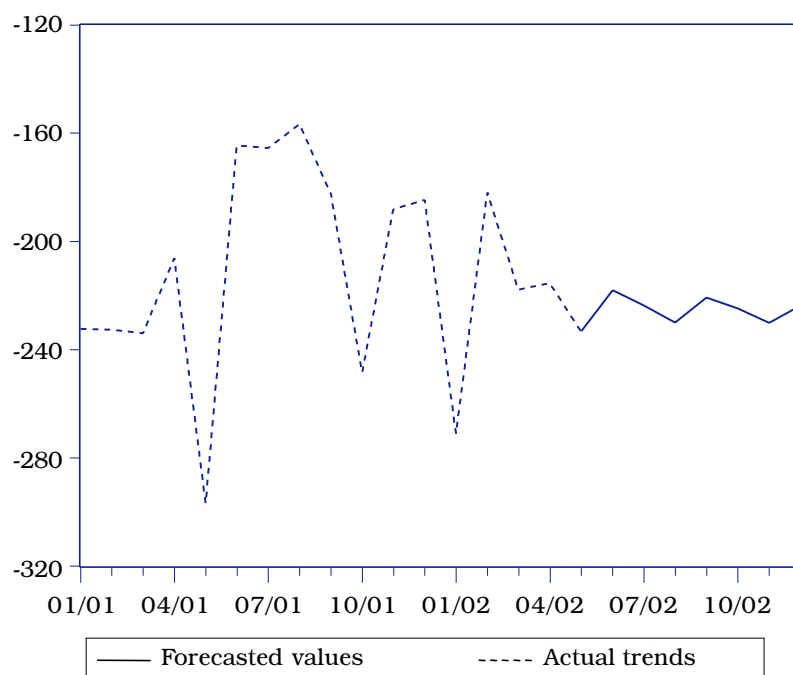
Average growth in commodity exports could be safely forecasted to range between 5.0% and 9.0% in 2002 year-on-year (Chart 4), while the average growth in commodity imports shall not exceed 10.0% (the lower limit ranges between 5.0% and 7.0%).

**Chart 4 - Commodity Export Trends, in US\$ thousand**



Based on the advanced forecasts of the commodity export and import trends, the upper limit of the foreign trade balance deficit in 2002 is expected to reach about US\$ 224 million per month, on the average, displaying a drop by about 8.0%, compared to 2001.

**Chart 5 - Trends in the Average Monthly Foreign Trade Balance Deficit - upper limit, in US\$ million**



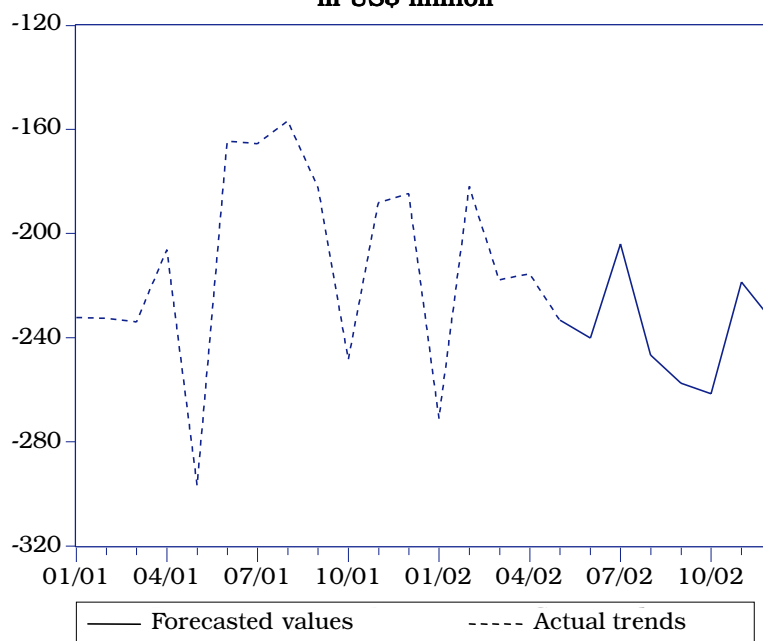
The lower limit of the foreign trade balance deficit in 2002 is estimated at US\$ 232 million per month, on the average, displaying a decrease by about 11.5%, compared to 2001.

*Real exchange rate trends do not explain trends in commodity exports and imports*

*Reduced foreign trade balance deficit*



**Chart 6 - Trends in the Average Monthly Foreign Trade Balance Deficit - lower limit, in US\$ million**

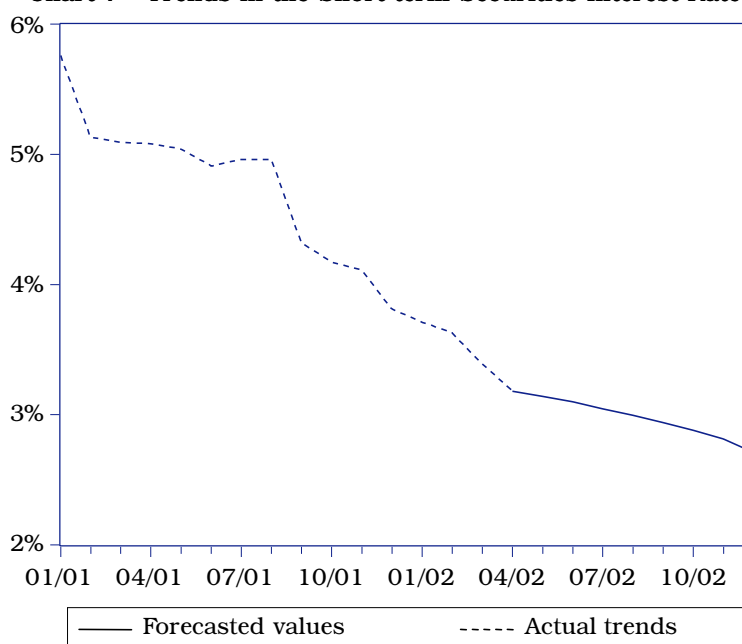


### **Prices, wages, foreign exchange rate and money**

We concluded that a long-term adjustment between trends in the retail price index, total wages and the nominal exchange rate exists. The fluctuation of wages and prices conforms to the long-term balance. However, the intensity of adjustment in prices decreased over 2001 and the early part of 2002, which resulted from the liberalization of prices.

According to the estimated balance of the relation of prices, wages and the exchange rate, a connection can be established between real wages and the real exchange rate. The real exchange rate has a significant impact on trends in real wages over the surveyed period. This impact, however, has weakened over recent months, which implies that the effects of exchange rate appreciation on growth in real wages have been exhausted; any further growth in wages shall result only from increased work productivity.<sup>1</sup> The trend in the real exchange rate affects real money flows. A direction of causality in connection with these two variables has changed over the surveyed period, but in recent years the dynamics of real money have been determined by the dynamics of the real exchange rate. In the course of 2001 and in the early part of 2002, another variable appeared, i.e. the short-term securities interest rate, which has a significant impact in terms of statistics on real money trends.

**Chart 7 - Trends in the Short-term Securities Interest Rate**



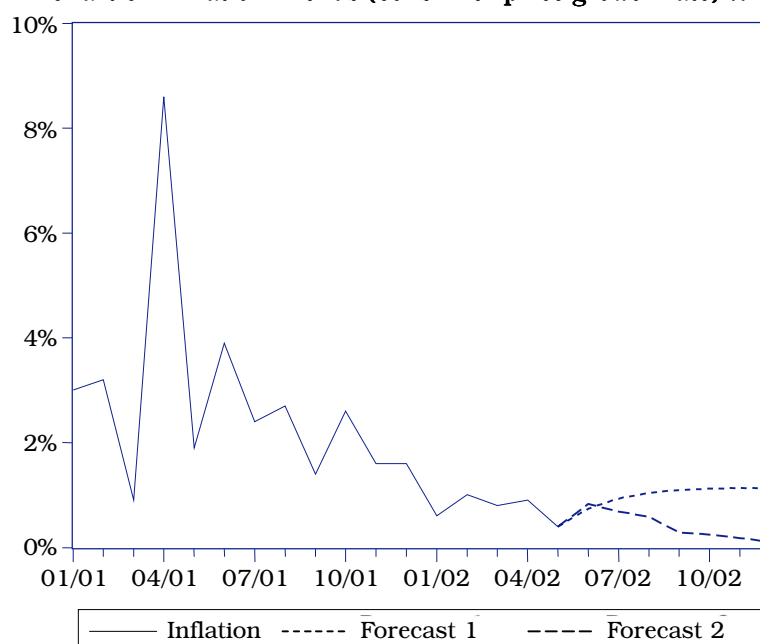
Trends in interest rates are forecasted on the basis of the relation between interest rates and the real exchange rate, and real money. The average drop forecasted for 2002, year-on-year, is about 35%, or 15% with respect to the forecasted value in December 2002 and the real value in December 2001.

<sup>1</sup> Trends in productivity of work are forecasted on the basis of trends in industrial production index and employment in industry. With regard to the projected decrease in employment by about 6% relative to 2001, and at the same time, increase in industrial production index by about 2%, it can be concluded that increase in productivity of work will be more based on sharper fall in employment than on industrial production growth.

*Drop in interest rates*

According to the presented mechanisms, consumer price growth in 2002 will be 7.0%. With respect to the impact of the 50% increase in the price of electricity on July 1, annual inflation is projected at 11 - 12.0%. At issue is a ratio of the projected value for December 2002 and the real value for December 2001. Our estimation suggests that electricity price growth will cause an increase in consumer prices between 4 and 4.5 percentage points.

**Chart 8 - Inflation Trends (consumer price growth rate) %**



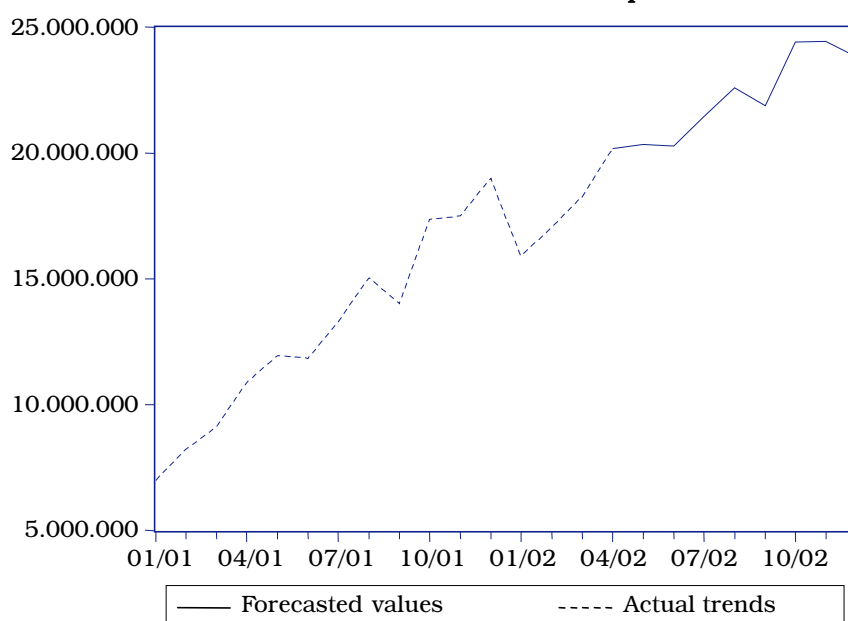
Forecast 1 refers to the estimated consumer price growth rate which takes into account the increase in the price of electricity, while Forecast 2 is the estimated consumer price growth rate that does not take into account that increase.

Wage growth in real terms is estimated at about 5.0%, in real money at 20.0%, while the real exchange rate is forecasted to drop further by about 6.0%. The presented percentage is given on the basis of the ratio of the forecasted value in December 2002 and the real value achieved in December 2001.

### Public Finance

Total public revenues of the Republic of Serbia are a function of prices and real wages. The 50% growth is forecasted with respect to the previous year.

**Chart 9 - Trends in Total Public Revenues of the Republic of Serbia (in YuD)**



In the structure of revenues of social insurance organizations, the increase in PIO Fund revenues is forecasted at about 92%; in the revenues of health insurance organizations at about 55%, and in unemployment insurance revenues by about 65%.

### Gross Domestic Product

According to the forecasted trends of dominant components and their relative share in the gross domestic product, the real growth of the gross domestic product in Serbia, excluding Kosovo & Metohija, is forecasted at 3.9% in 2002, year-on-year.

**Inflation in 2002  
lower than previously  
projected**

**Increase in public  
revenues**

**Real GDP growth of  
about 4.0%**

Milko Stimac

**Institutional Topic**

# Interest Groups in Serbian Privatization

**Privatization goals**

Designing of privatization models begins with an ideal situation wherein the anticipated processes should bring about a desirable outcome. Privatization goals are manifold - from transformation into a more efficient model of capital organization, through budget replenishment, to a definition of the chief direction for the transition, which is to establish economic and political democracy.

However, when applied, such goals come into conflict with real interests of the holders of political and economic processes. What eventually will prevail depends mostly on the degree of institutionalization of the privatization process, in other words on the development and strength of institutions critical to privatization - i.e. financial market institutions. Only if these processes are conducted through institutions can we hope to have results of the Polish model. Otherwise, processes meander under the pressure of other, non-strategic interests, veering off into what has been recognized in Croatia as "tycoonization".

To foresee the possible routes of privatization it is necessary to observe firstly those in charge of the realization of strategic and projected goals, as well as those in charge of the realization of real goals, finding out what instruments and institutions they both have at their disposal.

**Interest Holders****The State**

The state is the holder of strategic interests, the realization of which should bring about not only a more efficient ownership structure of the economy, but the establishment of economic and consequently political democracy. Elements of the program for Serbia were formulated in the document prepared by G17 PLUS for the Democratic Opposition of Serbia on the eve of the September 2000 elections. This document however provides only hints. Privatization as an entire process was developed by the Serbian Ministry for the Economy and Privatization through the new Law (in effect as of 2001) and a series of bylaws.

The importance of privatization for the transition and transformation of the whole society into a civil society, based on private property and a market economy, has unfortunately been left unstudied. Thus, privatization is restricted to narrow program frames, implying that its positive results could remain unexploited to their maximum.

Meanwhile, through the realization of this strategic interest, the state is in opposition to the short-term, almost daily interest, the pressure from which is hardly negligible. At issue is the necessity of budget replenishment, for which even proceeds from privatization are earmarked. Due to the initiated fiscal reform, budget centralization and the introduction of a treasury in the Ministry of Finance, this pressure so far has not assumed proportions which could threaten the realization of strategic goals of privatization, and it is likely that such a tendency will continue.

**The Workers - Shareholders**

Workers have their interests in the process of privatization as well, both strategic and short-term. Bearing in mind a saying that the best social policy for poor countries is the policy of economic development, the strategic interest of workers is undoubtedly a speedy and genuine privatization. This is in direct opposition with the short-term interest of each individual wanting to hold onto their job.

The initial resistance to privatization stems from these short-term interests. The decisive moment in winning over workers through their unions for the support of strategic goals, i.e. privatization, is related to negotiations between ministers for privatization and finance of the Serbian Government and unions of the metal and automobile complex Zastava. After this case, other large enterprises called for the same model of "zastavization" as a solution to their own surplus labor and lay-offs during the process of restructuring and privatization of their enterprises.

Speaking of workers, another reason for their ambivalent position should also be mentioned. Earlier laws on privatization made them into shareholders, creating a schizophrenic situation for both the employee and the employer at the same time. This position only strengthens the fundamental dilemma: a worker as a shareholder should seek the improvement of his enterprise and support its restructuring, including job reductions; meanwhile a worker as an employee strives to keep his job at all costs.

**Short-term and strategic interests**



## Managers

Enterprises make up the third interest group in the Serbian privatization. To put it simply, there are two groups of managers running the Serbian economy. The first group are those who have built their business empires in the last 12 years, relying on the political power holders in the former regime. From the outset, their position has been quasi-monopolistic, with their profit deriving from it, which likely means that they wish to maintain a status quo in the future. Privatization would be in their interest only if they could control it by taking over other companies. This has not been a frequent occurrence so far, perhaps because such giants were created not through privatization of state or socially-owned companies, but through overtaking/privatization of their businesses.

The second group of managers are those managing former and present socially-owned companies. It should be borne in mind that those who managed the most successful companies waited for the last moments when the old law on transformation of ownership was still in effect and transformed the socially-owned companies into shareholding companies. To put it more precisely, quasi-shareholding companies, as shareholders/workers have very little knowledge of shareholding and rights which ownership of shares provides.

Speedy and complete privatization does not suit this group of managers either, particularly if it carries with it the hazard of the overtaking of majority blocks of shares by strategic investors, which is encouraged by the Law on Privatization. What applies for managers of companies which are in between shareholding and state ownership, could be applied even more to socially-owned companies, i.e. to the whole segment of small and medium-sized socially-owned companies.

## Realization of Interests

### The State

Each of these three interest groups naturally seeks to satisfy its own interests, using all permissible methods at their disposal. The state has created institutions which launch the process of privatization in every enterprise: the Agency for Privatization and the Share Fund, which manage shares taken over by the state on the basis of the previous Law on Transformation of Ownership. An interim share register with the Ministry has also been formed, which should verify the ownership of shares in the period prior to the new Law.

Through the Law and bylaws, the state has appointed other institutions for the sale of shares, i.e. the auction of companies which are on sale. This refers primarily to the stock exchange. It could be said that inability to adjust the existing institutional network to the needs of not only the privatization process, but the budding financial market as well, stems from this.

The Managing Board of the Belgrade Stock Exchange has four ministers as its members - three of them from the republican and one from the federal government. Most other Board members went to the Agency for Bank Rehabilitation, following the bankruptcy of the four major business banks. Finally, brokers have only three members. The Board structure makes the Stock Exchange look more like a government agency than a market institution. All at a time when it is necessary to sell the majority of the capital in the state and to establish its market price as precisely as possible.

It is needless to point out the discrepancy between the management methods of the state administration and of what should be a *par excellence* market institution, which certainly leaves room for malpractice, regardless of competence and benevolence. The stock exchange as such has no impact either on disciplining or controlling managing boards. This is undoubtedly the first impediment to the achievement of the strategic goals of privatization.

### The Workers - Shareholders

Given the above facts, the protection of rights of small shareholders, or investments in general, can hardly be taken into account, because the split position of workers as shareholders and employees additionally opens up room for the manipulation of workers' interests as small shareholders<sup>1</sup>. The principles of shareholding and corporate management can hardly be discussed without an efficient stock exchange that is connected to the market and open to all interested parties. It is even more difficult to address the issue of the return of confidence in the financial market and in the new system in its entirety, the system whose formation has only started.

The position of the Security and Exchange Commission, a federal institution, further contributes to institutional insufficiency. Montenegro has formed a separate Commission, so that the federal Commission regulates the Serbian market exclusively. This opens up the possibility for political opposition to the decisions of the Commis-

*Two groups of managers*

*Dual position of workers*

<sup>1</sup> It is interesting that certain unions have started to insist on workers' education on the principles of shareholding and rights based on share ownership, which is in opposition to their supposed role in the system.

sion, whenever opportune, which reduces *de facto* the effects of the Commission's *de iure* work.

Further deprivation of the small shareholders' rights is provoked by the lack of investment funds. Without these, it is impossible to merge small interests and consequently to obtain greater importance for small investors.

### Managers

There is also a third group that is active in this area - managers. The lack of institutions, the low level of shareholding culture, non-established market mechanisms and investor protection leave ample possibilities for this group. Since the previous period and up to now, there has been an established practice of fostering ties with the state administration for both subgroups - tycoons and managers of new shareholding and socially-owned companies. Such practice is supported by the fact that there are no serious changes of personnel in the state administration, which gets an additional dimension in privatization - old groups tend to guard their interests.

To protect their own interests, managing boards of the new shareholding and socially-owned companies have at their disposal another direction of activities - towards employees, as their shares are needed to establish and maintain control over enterprises. More than enough room is available for malpractice, including, for example, depreciation of shares or exclusion of unwanted buyers from the exchange auctions.

This ends up with the management-buy-out-model of privatization, under the conditions created by the management itself, which either exclude all other interested parties, or place them in an unfavorable position, instead of the intended investment model, outlined in the Law. Thus the interests of one group are satisfied, but the state interests, relative to the budget replenishment, as well as to the strategic goals of privatization, are undermined. The methodology of origin speaks a lot about the nature of further development - if something was created irregularly, it would demonstrate strong tendencies to develop in the same manner, and to re-produce the conditions under which it was created. Such a buy-out by the management would jeopardize the rights of small shareholders as well, which would threaten the rights of workers in the case of Serbian privatization.

| Interest group |                        | Short-term goals | Strategic goals |
|----------------|------------------------|------------------|-----------------|
| The state      |                        | +                | +               |
| Managers       | Tycoons'               | -                | -               |
|                | Shareholding companies | -                | -               |
| Workers        | As employees           | -                | +               |
|                | As shareholders        | +                | +               |

+ presence of interest, - absence of interest

### Directions of Solutions

Capital should by all means finish up in the hands of the most capable. This is one of the goals of privatization. Both sub-groups of managers are certainly competent, as they have managed to sustain their companies and to enlarge their capital in many cases under the most unfavorable conditions of a rigid anti-market regime and international sanctions.

The ability to survive under such conditions does not offer a safe guarantee of the successful capital management in normal conditions. There is a reasonable trend to renew the conditions in which capital was made initially, in other words, illegitimate and insufficiently institutionalized conditions.

The civil society model, which should be an ultimate goal of the transition, presumes that the function of profit and social development both follow the same direction.

In order to be successful, the continuation of the privatization process needs to respond to the following questions:

1. How to discover managers with vision, to distinguish and stimulate them to take an active part in privatization? In other words, how to discover a group of capable managers who see privatization both as a short-term and as a strategic goal?
2. How to protect the interests of small shareholders and private ownership in the form of shareholding, clearing the road towards the strategic goals of the transition, which are in this case the same both for the state and for workers?
3. How to continue safeguarding the short-term interest of the state, i.e. budget replenishment from privatization proceeds?

A general answer to all three questions is simple: these could be achieved only if the processes are carried out through institutions, with institutions being provided with efficient instruments to influence processes. As far as the first question is concerned, for example, it is obvious that strong institutions are the only ones able to prevent personal entrepreneurship from being harmful to society. Concretization of this general answer leads us to the conclusion that the privatization process in Serbia today

Low level of  
shareholding culture

Three key issues

lacks the following, in order to avoid an outcome that is contrary to the set strategic objective:

1. **Reformed stock exchange** - A lot has been said so far about the importance of the stock exchange for encouraging entrepreneurship, as well as "exercising discipline" over it. For the stock exchange to be able to function in that manner, it is necessary to empower its relation with the market, i.e. to allow stockbrokers to appear as its founders and to be adequately represented in its management board. The stock exchange is an atypical example of an institution which performs a public function on the basis of private interests; at the same time, this is the only way to ensure its successful performance. Such a mechanism of stock exchange performance would help the process of distinguishing capable managers from those "who were made capable by the circumstances". The NBY's proposal of a new law which should regulate the entire issue of financial markets (business activities on it, actors and institutions) has just entered parliamentary procedure; thus, we could expect improvements in this field fairly soon.
2. **Stronger Security and Exchange Commission** - As a federal body, this Commission will not be able to define its own position until relations between Serbia and Montenegro are defined in their final form. The Commission should protect the strategic interests of two actors in the privatization in Serbia - the state and the workers. A single market involves single investments, regardless of whether someone's provincial attitude is willing to accept this. It is interesting that the Commission, within its present makeup, i.e. at the most uncertain stage of its existence, has completed more strategic jobs than all former Commissions together. This primarily refers to full membership in the IOSCO, all the more so since the IOSCO is expeditiously becoming a match to other international financial institutions - a global regulator of the market (securities). The existence of single institutions in a single market does not rule out the possibility of establishment of republican (or even regional?) commissions, starting with specific characteristics of particular sections of the market. Former trends in development of the financial market in Serbia, i.e. its very beginning, has already shown the necessity of establishing regulators in the securities market on the level of Serbia; again, this would prevent an institutional vacuum if negotiations on the future of the union fail in terms of logical and realistic solutions.
3. **The establishment of a central register of securities** - In spite of great significance of the Temporary Register of Securities with the Ministry of Privatization and of the Belgrade Stock Exchange Clearance and Settlement Department, full protection of private property cannot be realized without an independent central register of securities. This could be established most easily within the reconstruction of the Payment and Settlement Bureau (ZOP); similarly to the French SICOVAMN, ZOP could at once perform the function of a register and a clearance and settlement office. In this way, one of the rare positive, inherited elements from the former period would be revealed. All advantages of this setup are already notable in trading in old foreign currency savings securities.
4. **Investment funds** - Concentration of capital is a necessary second stage of privatization. But again, only if it is based on the process performed within institutions, which enable the rationale and interest of the capital itself to be revealed to the greatest extent. Concentration through forcing down the price of workers' shares for the sake of perverted management-buy-out would not lead the capital into the hands of those who can manage it in the best way. On the other hand, widely dispersed capital in the hands of workers generates management problems that in all their specific characteristics extend to the concept of workers' self-management. The solution could lie in the establishment of investment funds and their wide performance. This would be an institution exclusively designed to manage capital and thus to protect the interests of shareholders. Finally, small shareholders provide their small deposits with better specific gravity if they are concentrated in funds. However, the problem is that we still do not have a law on funds; hence there are no formal legal grounds for their activities. Some of the existing law proposals should certainly enter parliamentary procedure as soon as possible.

Privatization established within a framework that is defined thus would provide the answer to the second question - why there is no greater degree of transition? Such a privatization framework would at the same time provide the framework for an institutional environment that is congenial to potential investors. If private property, for example, is not protected in its smallest unit - with individual shareholders, than it is not secure with the biggest units either. If there are no ways or institutions to discipline the market participants in a market sense, this only implies that state interference, whether indirect or direct, still exceeds acceptable limits. It is ironic that the state, although the ultimate institution among all institutions, does not remove the institutional vacuum in this way.

Finally, the state has recently recognized the problem of management as the problem that blocks Serbian privatization, consequently encouraging management to enter the process. Unfortunately, ad hoc solutions are once again in use. Bank loans offered to managements and workers in enterprises for buying them out are more than desirable. Security for these loans should be property of the members of management and of the workers, but not the enterprise itself. If an enterprise remains as the only security for such loans, the situation recognized as "Tunneling" in the Czech Republic, not entirely unfamiliar in our market as well, will be repeated - which is all the more reason why we should be afraid of it.

## *Lacking institutions*

## *Protection of private property*



## A roundtable discussion organized by the G 17 Institute and the Educational Forum

# Education and the Market

On June 10, 2002, the G17 Institute held a roundtable discussion "**Education and the Market**". The roundtable discussion was attended by experts of diverse profiles who operate in the field of education and educational policy, deans and professors of particular faculties, UNICEF representatives (the Belgrade and Podgorica offices), by deputies of the Serbian and Montenegrin Ministers of Education, members of the Educational Forum and the G17 Institute associates. The gathering was opened by **Milko Stimac**, CEO G17 Institute. The moderator of this meeting was **Ana Pesikan**, member of the Educational Forum.

In her opening speech Ms. Pesikan explained the goals of the roundtable as the need to raise the subject of the relation between the economy, i.e. market, and education and to discuss its complexity. Another objective is to examine possible solutions, to envisage how these solutions could be feasible and justified in our conditions, what effects they would produce and in what way they could be implemented.

Welcoming the participants, Mr. Stimac restated the G17 Institute's commitment to the idea of establishing an adequate relation between education and the market, assuming different aspects of this relation. He stressed that, with regard to the relation between education and the market, there cannot possibly be too much liberalism.

The keynotes were given by:

- Dr Mirosinka Dinkic, Scientific Counselor, G17 Institute
- Professor Dr. Ivan Ivic, Educational Forum
- Martina Vukasovic, The Serbian Students' Union (SUS).

**Mirosinka Dinkic** began the discussion with reference to the activities of the Ministry of Education and Sports of the Republic of Serbia in the organization of work on the strategy for development of education within the broader reform of education. Mrs. Dinkic stressed that over the course of the previous year the Ministry of Education organized teams of experts for seeking the most adequate guidelines and solutions for the reform of education in Serbia. According to the results obtained through surveys and actual suggestions for particular issues significant to the forthcoming reform of education - decentralization, democratization, additional education of teachers, education of adults, education of citizens with special needs, improvement of curriculums, etc. - the Ministry organized a donors' conference in January 2002 in order to generate funds for the preparation and implementation of reforms in the area of education, as well as for infrastructural adaptation at all levels up to secondary education and for modernization of equipment in schools. During their work, expert teams had opportunity to test their suggestions in contacts with competent international experts who, as a rule, supported these suggestions and ideas, and, through discussions, sometimes developed and supplemented them. Using authors' texts from the expert teams, the Ministry of Education and Sport of Serbia published a study "Quality Education for All - A Path Toward Developed Society" which will serve as a basis for creating a concrete strategy for development and for the reform of education in Serbia.

Further discussion was directed more toward the relation between education and the market. In that context, Mirosinka Dinkic emphasized that this subject should be discussed in view of the objectives of development of education in Serbia, bearing in mind international documents; the most important among these objectives are (1) access to education; (2) quality of education; (3) democratization of the educational process; (4) decentralization of administration and financing of education.

Discussing the relation between education and the market in the context of the previously advanced objectives, Mrs. Dinkic stressed that the economic position of education in Serbia, which is very unfavorable and which has permanently deteriorated over the past ten years, is a key barrier to the better quality of education. It is necessary, therefore, to create conditions for improving the economic position of education, which is only possible primarily through increase in the GDP per capita and in expenditures for education per pupil. Considering the relatively hard economic situation in our country, it would take plenty of time solely to provide sufficient resources for achieving the necessary level of quality in education process. It is known that market economy countries use additional sources for financing education, besides assets allocated from the budget, especially with regard to higher or professional education. It is therefore necessary for us, as well, to take this issue into consideration, especially within the subject discussed at this roundtable: how to provide additional assets for investing in education, given that these are investments into human capital; in the developed world investment in education is not considered an expense, but an investment which yields both individual and societal benefits.

Another aspect of education and the market is comprehended as a need to establish mutual correlation between educational policy and labor market policy. In Mrs. Dinkic's opinion this is an important factor both for raising efficiency of the economy and the whole of society, and for achieving economic efficiency of education as a whole. Modern developmental theories comprehend education as a developmental factor, not as spending. Therefore it is very important, especially with regard to professional education, that educational process prepare experts for profiles and occupations demanded by the labor market. Since the educational process takes several years, future professions and occupations, which are estimated as potentially demanded in the coming ten to fifteen years, should be planned on the basis of broader developmental strategies - technological, cultural and others. The decentralization of financing of education appears as an important factor in that sense, since social partners - companies, the public sector etc. - are more familiar with the actual situation in the field and possible preferences among citizens in terms of total development,

*"Quality Education for All - Path Towards Developed Society", a study published by the Ministry of Education and Sports of Serbia*

*Investment in education - investment in human capital*

*Correlation between educational policy and labor market policy*

because, after all, citizens provide the funds for financing education by paying taxes and contributions, and hence are interested in good quality education for their children, as well as in the type of education which will provide them with future employment and good income.

In order to achieve these objectives, Mrs. Dinkic finds it necessary to define the role of particular institutions in the system of education, from schools up to the national level.

In Mrs. Dinkic's opinion, competition among educational institutions should be allowed, both between state and private institutions, and within these two sectors. Society could be protected from the downside effects of competition in this area through the establishment of standards which will regulate the conduct of all actors in the educational process. Accordingly, with regard to the market, education is relatively autonomous, but some of its functions are directly correlated with the market. That correlation must not be abused, but used to raise the quality of educational services. For this reason the system of competition in quality is not fully liberalized in this area. The system of external and internal evaluation of teachers and educational institutions provides ranking and open access to the rank of quality by the public. This is aimed at providing freedom of choice as the most important institution of every democratic society.

In conclusion, Mrs. Dinkic addressed the issue of financing of education, as well as of the need for development of the private sector in education as an integral part of the educational system as a whole. She advocates eventual state participation in financing private schools and prohibiting teachers and professors employed in public schools to be engaged simultaneously in private schools, at this stage of development. The system of private education must be regulated so as to establish order in this area because the education of children and the youth - the most vulnerable part of the population - is at issue here; any mistake in this area could have fatal consequences for the entire development of society.

**Ivan Ivic** focused his discussion on the relation between education and the market in view of currently topical worldwide debates on application of the GATS, (General Agreement on Trade and Services within the World Trade Organization, which fully refer to the trade in "educational services"). He reminded the audience of the well-known dilemma that has been attracting attention of the international public for some time, that is, whether education will be able to survive as a public good, or whether it should be treated as a market product today. Mr. Ivic discussed this subject with regard to the state of affairs in the world and their impact on educational policy in our country. He presented ideas and events linked to GATS and their consequences on the countries that are preparing for membership.

In the original text of the GATS, the status of education is discussed at four levels:

1. Supplying services across borders (education at a distance through information technologies);
2. Spending in other countries (studying abroad);
3. Commercial presence of educational institutions of one country in other countries;
4. The presence of natural persons on the territory of a foreign country (teachers engaged in a foreign country, administrative board members, etc.)

According to Mr. Ivic, GATS might be dangerous in many ways for countries which accept it. Primarily, this concerns the trend of growing liberalism, as well as trade in services. A potential danger is tie-in trade. In the opinion of many analysts, such liberalization in the area of education could seriously harm national culture, national identity and even national sovereignty. A foreign partner is governed by profit when he/she opens subsidiaries in a foreign country; therefore, only institutions able to generate profit will develop (international management, various fields of information technologies, mass culture, etc.). Under such circumstances, less profitable fields, important for national culture and national development will be neglected. Foreign educational programs are often held in foreign languages, which could contribute to alienation of intellectual elites. GATS also imposes equal treatment for local and foreign educational institutions. Only if the state is an exclusive provider of particular educational services on a non-commercial basis, this provision does not apply. Mr. Ivic emphasized, however, that internationalization of education has existed so far, as well, but only on a non-commercial basis. Experts from educational circles support more intensive internationalization, but are against commercialization of international exchange in the area of education. The key problem that could appear on the global market, where commercialization and liberalization is implemented in line with GATS provisions, refers to unequal access to education among different social groups. If sheer economics are at issue, state authorities will lose their power of administering an important activity such as education, and will hardly be able to provide the universal right to education.

On a global level, there is an increasing mobilization of individuals, institutions and international organizations which act in the area of education. Resistance comes from the organization Education International that gathers 25 million teachers (almost a half of the total number of teachers in the world). They point to the fact that GATS is in contradiction to other documents such as the *United Nations Convention on the Right of the Child* and the UNESCO document *Education for All*, as well as being in collision with the *General Declaration On Human Rights*. The *UN Convention on the Rights of the Child* underlines the universal right to education, while *Education for All* underscores the need of providing quality education for all and of increasing expenditures for education in order to secure basic education for the whole population.

In conclusion, Mr. Ivic advocated the idea that education must not be discussed only from the economic prospective and especially not to put only emphasis on its role in creating the labor force, however important this might be. It would be a catastrophe to confine education only to production of human resources. Education plays an important role in the realization of human rights, in the provision of social integration and cohesion, in the development of personality, in fostering cultural and spiritual development of citizens, in the provision of the right to cultural identity of ethnic minorities, etc; all of these roles can hardly be adjusted to the principle of profitability, which is fundamental in the GATS. These roles of

## Competition among educational institutions

## GATS - pros and cons

## Preparation for upcoming problems

education cannot be realized by the market, but quite the reverse, through state participation in this important area.

Mr. Ivic sees the main objective of this initial discussion on the relations between education and the market in the preparation of our country for problems that will soon become topical. Sticking to the policy of openness toward the world and advocating internationalization of education, we should prepare ourselves well for accession to the WTO and GATS in order to increase benefits and to reduce damages that might emerge if all the principles of commercialization and liberalization of international relations in the area of education are accepted without constraints (while the GATS itself allows for constraints with regard to particular provisions), as was the case with some least developed countries and transitional countries.

**Martina Vukasovic**, president of the SUS and the ESIB (European Students' Union that encompasses 48 national students' organizations from 36 countries) discussed the relation between education and the market from the students' perspective. She also referred to the problem of GATS and "commodification" of education, i.e. its treatment as a commodity. The students' representative stressed the necessity for providing equal access to education for all. Therefore, education must not be treated as a commodity.

Ms. Vukasovic also pointed to the fact that the Bologna process stresses the necessity for education to remain a common good. She underlined the problem of financing education, but at the same time warned that if students' financial participation were introduced, education would be available only to those who can afford it. This further implies that the best students would not study at faculties any more, while individuals would graduate with a large debt toward the state or toward institutions from which they borrowed the money for schooling. The favorite argument frequently mentioned in favor of the introduction of tuition is that students would be more motivated to graduate expeditiously if they paid for their studies, but in Ms. Vukasovic's opinion this is not true. This will not resolve the main problem for students of the lack of motivation and the burdensome nature of studying and examination.

Ms. Vukasovic also raised the question of what will happen to faculties which are not market propulsive - does this mean that they should no longer exist? With regard to the idea of corporations financing faculties, she warned of the danger that faculties could lose their autonomy. Ms. Vukasovic gave the example of a pharmaceutical company which would be willing to finance the Faculty of Pharmacology with the objective of obtaining a certificate and the provision to sell a particular medicine on the market. In conclusion, strongly supporting exclusive state financing of the university, Ms. Vukasovic pointed out that we must not jump to the conclusion that education is expensive since research shows that education of the entire world population requires as much money as is spent on all armies in the world, or the amount that changes hands on world stock exchanges in just 18 minutes.

## Participants in the Roundtable Discussion

The introduction was followed by a discussion participated in by Professor Ph.D.

**Ljubomir Madzar**, BK University Dean; Professor Ph.D. **Branko Medojevic**, Dean of the Faculty of Economics, Belgrade; Professor Ph.D. **Hasan Hanic**, Faculty of Economics, Belgrade; Professor Ph.D. **Milena Dragicevic-Sestic**, Dean of the University of Arts, Belgrade; Professor Ph.D. **Zoran Petrovic**, Institute of Physics; Professor Ph.D. **Ratko Jankov**, Faculty of Chemistry, Belgrade; **Svetlana Marovic**, UNICEF Belgrade Office; Ph.D. **Dijana Plut**, Institute of Psychology; Professor Ph.D. **Snezana Medic**, Faculty of Philology, Belgrade; Professor Ph.D. **Ljubisa Rajic**, Faculty of Philology, Belgrade; Ph.D. **Aleksandra Jovanovic**, Head of the G 17 Institute Institutional Reforms Department; **Vigor Majic**, Deputy of the Ministry of Education of the Republic of Serbia; Professor Ph.D. **Gordana Zindovic**, Teaching Faculty, Belgrade; Ph.D. **Aleksandar Bogojevic**, Institute of Physics; **Radovan Damnjanovic**, Deputy to the Minister of Education and Science of Montenegro; Professor Ph.D. **Milena Drakulic**, Faculty of Organizational Sciences; as well as organizers of the roundtable discussion, Ph.D. **Mirosinka Dinkic**, Professors Ph.D.'s **Ivan Ivic and Martina Vukasovic** and Ph.D. **Ana Pesikan**.

## Allowing Investment in Education

**Ljubomir Madzar** began the discussion by pointing out that education can certainly not be left to the market only. Education as an activity with huge external effects is primarily useful for the individual, but also for those who live around that individual. But this does not mean that we should fear market elements and be skeptical of private institutions. Education is an area that requires plenty of money and therefore all interested parties should be allowed to invest. The state will be disburdened to the extent of permitted investments, and therefore able to redirect these assets to some other needs.

The fear that only those who are not the best will enter our market is not justified. Even if it might not be top-class, there is still plenty that could be useful and beneficial. In professor Madzar's opinion, we should not permit an anaerobic system, i.e. a system which is more closed than the economy. It should be open and let all who acquired their diplomas in foreign countries to take part in it

## Additional investments in education in Serbia are necessary



Some of the first participants in the debate made logical lapses, opting for an exclusive solution of "state or market". On the contrary, it is necessary to perceive all shortcomings of the market and to correct them by applying state mechanisms. We should not choose between two mechanisms with inadequacies, but attempt to find best solutions through their complementarity. Foreign competition can only improve the quality of our education, and quality is best evaluated through employment. If some educational institution produces poor human resources, the diplomas obtained in such institutions will soon prove worthless or low-ranked; consequently, such a school will soon be closed because no one will choose to attend it. Therefore, international competition can cause no harm, but only help us to improve our educational system and to reach new knowledge offered by those schools.

The next debater, professor **Ljubisa Rajic** views the previously discussed issue as a political matter that is not related to education or the economy. Knowledge is a commodity, professor Rajic stressed, but a commodity produced by citizens with a university education. At issue are semi-finished products over which university professors do not have control. On the other hand, education is a long process in which positions, values and cultural heritage is transferred. "To produce educated people" Professor Rajic underlined "is not the same as to produce ashtrays."

The position that there is no money for education is wrong. Resources exist, but the problem lies in their distribution. Therefore, professor Rajic concluded, the political issue of what we want to achieve with education must be sorted out first, and only then will it be possible to deal with the problem of financing.

**Branko Medojevic** returned to the dilemma whether education is a common good. He referred to the modern European practice which confirms that education gradually seizes to be viewed that way; even the richest countries have started to think differently. Therefore it is necessary to find the proper combination of keeping the common good character of education, and permitting private initiative and participation in tuitions. This is especially important in our country since the present GDP is at the level of 45% of the GDP achieved in 1990, while the network of educational institutions remained the same.

Mr. Medojevic believes that no chaos is present with regard to financing education, i.e. in establishing tuitions. In a situation where the state covers only 20% of material costs, with schools nevertheless functioning, how can we talk about chaos? The relation of the state to private schools must be defined also in order to introduce some system of control.

**Hasan Hanic**, presented to the audience a project prepared by the Faculty of Economics in Novi Sad commissioned by the Ministry of Education of the Republic of Serbia. This project sets the price of education in primary and secondary schools and at universities. But, in addition to this, it is necessary to provide a quantitative, structural and personnel adjustment between what is offered and what is demanded on the labor market.

In Mr. Hanic's opinion, negative presumptions toward the market approach exist. There are both profit and non-profit organizations in the world which operate in the area of education, whereas the profit sector is not necessarily bad. On the other hand, the lack of assets in the state-owned sector of education might lead to a decrease in quality of educational services.

Professor **Dragicevic-Sestic** stressed that the problem with private schools is that there has never been adequate evaluation of their work. Hence, an independent agency which would deal with rating of schools should be established. Education has long-term consequences and the state, as well as parents, should have the right information about those schools. For now the only available information is of a promotional nature that no one checks.

Professor Dragicevic-Sestic pointed out that up to 30 years ago no private university of the rank of Stanford or Harvard had been established as a profit institution and instead operated on a system of financing by donors. However, it does not mean that state universities are irreproachable. As it seems in Serbia today, they worry about the quality of teaching, but not about the quality of the learning process. Another problem is that in many departments students are trained as scientists or abstract artists, with little attention being paid to gaining practical skill. Because of all this, professor Dragicevic-Sestic supported all participants who spoke in favor of the necessity to create a national strategy and educational policy that should specify what kind of human resources we should educate and how they will adjust to future changes in the development of society and the economy. "This is a political question and we have the right to ask for an answer to it".

**Zoran Petrovic** finds too much concern over private universities confusing. Throughout the world, private non-profit universities have corrective mechanisms, scholarships, loans, etc. The biggest problem could be the fact that we will not have students; therefore it is necessary to provide incubators. The state must develop mechanisms against criminals and for the protection of national interests, as well as mechanism of evaluation of diplomas.

**Ratko Jankov** stressed that some fields are more attractive, while others are less attractive in terms of profit. In view of the discussion whether universities should have a profit or non-profit character, the question arises as to what to do with those less profit-attracting fields. This is the case with astrophysics, while, as far as studies of law or economics are concerned, this is not a problem at all. Students who study law or economics aspire to high wages in companies in which they will work in the future, and therefore, interest for studying among these students is not surprising. However, this allows private owners to open universities for these fields, but there is no similar interest in establishing faculties which would study less profitable sciences. In Mr. Jankov's opinion, this issue must be further discussed.

**Svetlana Marovic** stressed that the whole discussion is concerned with high education only. But compulsory education, i.e. primary education must be also taken into consideration. In Ms. Marovic's opinion, pre-school education should be given a compulsory charac-

*Optimal combination  
of state and market  
mechanisms*

*Insufficient state  
assets bring about a  
decrease in quality of  
educational services*



### There is space for both the state and the market

ter, too. Examples of gaining assets for primary education through renting gyms or other premises are not good because they are to the detriment of quality of the pupils' schooling.

**Ph.D. Dijana Plut** pointed out that an "either-or" attitude toward this issue is completely wrong. The state-owned part of the system shows evident problems, while on the other side we have a dangerous market mechanism. Ms. Plut wondered why we would not create an inclusive system. It should be made profitable for private capital to merge with state-owned capital, and thus to satisfy the interests of the state and the market with regard to educational policy.

**Ph.D. Aleksandra Jovanovic** stressed that there is certainly enough space for the state; namely, introduction of the private sector does not eliminate the state's role. But there is a question of the extent of state interference in the field of education - the state must not be allowed to monopolize this area. If financing is at issue, one possible solution could be to issue vouchers to students that they could use either for enrolling in state or private universities. When making a decision about studying at university, an individual gives up his/her current profile for the sake of the future one. Hence all the more reason not say that the university is a supermarket, and not to assume a paternal attitude toward students.

**Professor Snezana Medic** asserted that national interests in educational policy must be defined first. In her opinion, the task of expert circles is to define commitment for the proper strategy of education and the mechanisms of its implementation.

**Vigor Majic** emphasized that Serbia is one of the rare countries in which non-profit activities are not regulated. On the other hand we have to admit that we already have a private sector in education. But, only if education is organized as a non-profit activity, the state has the right to interfere in it. If it is defined as a non-profit activity, foreigners could be safely allowed to invest in schools, but not allowed to take money out of the country. In his opinion, there must be a way to attract our emigration to invest in schools, not only in churches.

Mr. Majic also stressed that the higher the level of education, the diploma becomes more important than the acquired knowledge, for it is supposed to provide some benefits in life. Therefore he suggested a campaign to be conducted which would be aimed at restoring the leading role of knowledge, of confidence in the educational system and at encouraging new investments.

**Professor Gordana Zindovic** supported the idea of a non-profit character of education, but she is personally doubtful about our accession to the EU any time soon. The spirit of one people cannot change overnight. Our country is poor; in such a country education is a common good. If we introduce private schools, what will happen with smart but poor children, professor Zindovic asked. She expressed fear that the quality of education will decrease, while the market economy will not resolve the problem of the quality of the teaching staff.

**Ph.D. Aleksandar Bogojevic** pointed out the absence of clearly defined objectives. He agreed that the state's role should not be overemphasized, but should rather be corrective.

**Radovan Damnjanovic** presented to the audience the Montenegrin experience with regard to this issue. The creation of a law on education at all levels is underway in Montenegro. New legal solutions do not exclude a profit character of education. Institutions are non-profit as a rule. The intention is not to close this sector, but to offer solutions that allow elimination of possible mistakes. The designed system is in compliance with European experiences, but this must be supported in economic terms.

**Professor Milena Drakulic** highlighted the experiences of faculties which, in spite of state ownership, have been present on the market for some time. This is the current position of the Faculty of Organizational Sciences which is in competition both with other state faculties and with private faculties. It is hard to provide teaching and expert staff in such faculties in a situation where demand for them is considerable. At issue are people whose profession is computer science and who can find much better paid jobs elsewhere. Therefore, professor Drakulic stresses, we cannot start with an assumption that the situation is the same in all faculties or that each solution is equally good for each faculty.

Beside the participants in the debate, its organizers - Martina Vukasovic, professor Ph.D. Ivan Ivic and Ph.D. Miroslav Dinkic - sporadically offered some additional explanations and information.

Ms. Vukasovic stated that if there is a bad market and a bad state administration, the solution is not to shift towards the market, but to improve the state. She does not agree with the argument that education is expensive. If it is inaccessible, then one of the basic human rights, the right to education is denied. Professor Ivic repeated the problem of commercial internationalization and joining the GATS. The Ministry should be asked why it did not inform the public about the existence of GATS and its consequences on education. Mrs. Dinkic underlined that the main directions of developmental strategy in Serbia were indicated in a publication released on this subject, which was prepared by the Ministry of Science. She stressed that when we talk about education and the market, we are not talking about a political issue, but about a professional and a scientific approach. The roles of the state and of the market in this field were examined elsewhere in the world a long time ago; they turned out to be more complementary than in opposition. The kind of state role and the level of its performance (government, region, municipality) which is necessary in given conditions must be assessed. No economists who deal with the problem of education treat this activity as a commodity. It is done by other professions which might not be capable of comprehending properly relations of education and the market in modern conditions of development. The effects of education from the economic prospective should be measurable, i.e. competent officials should be able to examine whether investment met expectations, both from an individual and from a wider social perspective.

**Ph.D. Ana Pesikan** closed the meeting. She greeted the audience and thanked them for their participation and useful ideas. She stressed that the main objectives of the roundtable were largely fulfilled. This was one discussion on education and educational policy from the prospective of the state and the market; it ended with the listing of problems, offering of ideas to overcome them and exchanging of experiences.

### State faculties and the market

# Public Procurement Law

Robert Sepi

High summer temperatures seem not to affect reformist activities of the Government and the Parliament of the Republic of Serbia. Continuing to complete the legal framework for reforms, the Parliament adopted the proposal of the Public Procurement Law at the beginning of July; the adoption of this law has been looked forward to because of the expectation that regulation of this area will reduce opportunities for corruption and other illicit actions. The Law should regulate in detail all kinds of public procurements, i.e. conditions, ways and procedures in each of them

In its basic provisions, the Law introduces a good solution both in terms of legal technique and from the aspect of its future enforcement. In order to confine possibility for different interpretation of particular provisions and consequent different enforcement, the legislator defined the meaning of the key terms included in it. Furthermore, with desire to emphasize final intention of its adoption, the Law underlines two important principles in its introductory provisions: the principle of equality of bidders as a necessary presumption for realization of the principle of competition among the bidders. The Law contains a separate subheading "Anti corruption rules" that provides for the orderer to be allowed to turn down a bid if he/she possesses valid proof of illicit connection with intent to profit between the bidder and a person presently or formerly employed by the orderer, standing as an attempt to influence the functioning, decision-making or course of the public procurement procedure.

As was advanced above, the Law distinguishes different types of public procurements and procedures that are performed in order to allot the contract on public procurement. With regard to the types of public procurements, they are first divided into general and special public procurements. General public procurements are divided on the basis of the scope of the contract for the supply of goods, for supply of works and for supply of services. Special public procurements are divided according to the significance and delicacy of the field in which public procurement is performed (public procurement in the field of water resource management, energy production, telecommunications and transportation) and according to their value (public procurements of small value). The Law further distinguishes three types of procedures for allotting contract on public procurement: open procedure, restricted procedure and bargaining procedure. Each of them involves special rules of procedure and relation to other types.

The competence for performing the procedure for allotting the contract is divided between the orderer and the Public Procurement Bureau, which will be established as a separate administrative unit. The initial act for starting the public procurement procedure is a written decision of the orderer; the content of this decision is precisely prescribed by the Law. For the public procurement procedure to begin, two cumulative conditions must be fulfilled: a particular public procurement must be projected in the public procurement plan and the related assets must be earmarked in the budget of the orderer. Unlike the orderer who is assigned to undertake the procedure in a narrower sense, the competences of the Public Procurement Bureau are set at wider grounds and precisely listed in the law; among them, the most important are the provision of consulting services to the orderer and the bidder, the monitoring of the public procurement procedure and the preparation of the pattern of tender documents and contracts for typical types of public procurements. The significance of this area is best illustrated in the provision that requires the Public Procurement Bureau to submit to the Government an annual report on the previous year's public procurements. In order to provide full legality and regularity of the procedure for allotting contracts on public procurement, the Law prescribes the establishment of a Commission for the Protection of the Rights of Bidders within the Public Procurement Bureau. The Commission members are appointed by the Government, while the Commission for its part is obliged to produce annual reports on its work to the Government and to the Parliament. This Commission would enable conducting of the adhesive procedure for protection of the bidder's rights, while the bidder who finds his/her rights violated during the public procurement procedure has an active legitimacy to initiate the procedure. The initiation of the mentioned proceedings generates automatic consequences on the public procurement procedure since it postpones further activities of the orderer from that moment on.

A novelty introduced by this Law is the possibility for the orderer to authorize other legal entities to conduct the procedure for allotting a contract on public procurement on his behalf and for his account, without listing the cases in which this is allowed. An unquestionable value of this Law lies in its provisions that provide a detailed list of contents of tender documents and defines exact cases in which it could be changed and supplemented, together with persons entitled to direct insight in it. Worthwhile mentioning are provisions which set up criteria for defining the value of a particular public procurement that vary in each of the previously noted types, and a relatively complex system of criteria for the selection of the best bid and its weighting.

The conditions on who can take part in a public procurement procedure have generated the most debates in parliamentary proceedings due to their restrictive nature. It is yet to be seen how their enforcement will look like in practice, since apart from those formulated in the law, there is a right to formulate conditions on the part of the orderer. Since the burden of proof of fulfilling the prescribed conditions rests on the bidder, no less interesting will be the analysis of the way and manner of proving non-initiation of bankruptcy, liquidation and forced settlement proceedings by the bidder and his/her not having a record of criminal and commercial offenses.

Publicity in the field of public procurement is three-fold. Firstly, the law provides for transparency of announcing public procurement bids through advertisement. The provision which prescribes that advertisement on public procurement must be published in at least two written media, one of which must be "The Official Gazette of the Republic of Serbia", indicates that the adoption of this Law is intended to provide real transparency in this area and to prevent publication of advertisements in media that are not accessible to the wider public. Furthermore, the orderer is obliged to inform the public in "The Official Gazette of the Republic of Serbia" within 14 days from the day of the conclusion of contract about whom the contract on public procurement was allotted to. Finally, it is basically prescribed for bids to be opened publicly both in an open procedure and in the second stage of restrictive procedure.

It is still too early to estimate the future effects of this law. The only certainty is that its efficiency, apart from public mood and political stability, will be largely affected by motivation and professional expertise of the officials in charge of its enforcement and of monitoring legality and regularity.

*Two important principles: equality of bidders and competition among them*

Gordana Mihajlovic

# Inaccuracy of Land Registration and Land Registers<sup>1</sup>

With regard to the inaccuracy of land registers as a frequently mentioned argument in favor of the introduction of general evidence, this article is designed as an overview of the reasons for the inaccuracy of registration of rights to real estate in land registers. As far as the term inaccuracy itself is concerned, it can be divided into two types: the inaccuracy of the court in charge of keeping and maintaining land registers and the inaccuracy of land registration in terms of the record keeping of ownership rights to real estate and the record keeping of real estate itself. This article is based on the experiences and practice of the Second Municipal Court in Belgrade, the court with the ultimate competence for keeping and maintenance of land registers on the territory of Belgrade, which keeps land registers for all other municipalities, except the municipality of Novi Beograd and Zemun, thus standing for the biggest land registry court in Serbia.

The difficulties that emerged in the Second Municipal Court at the time of land registration of the former socially-owned flats bought out by citizens may serve as an illustration of the inaccuracy of courts. A lot has been done in the meantime in the courts with regard to increase in the quality of work, and in regard to increased accuracy; consequently, the Second Municipal Court has achieved substantial, enviable efficiency, whereby interested parties are able to pursue registration, i.e. to obtain a registration certificate within a much shorter period (one to two days), given the previously established priority order.

Given the record of real estate property rights that is kept in land registers in Serbia relative to the existing quantity of real estate, it is safe to assume that the majority of real estate is still unregistered, in terms of sheer physical existence, not to mention the record of titles to that real estate. The reason for this situation should not be sought only in the land registry itself or in the shortcomings in the work of land registry courts. No less responsible are the deficiencies outside of the court itself, relating either to non-existent construction documentation or to the acquisition of titles to real estate which is not in compliance with the procedure prescribed by the law. To put it simply, the factual state of real estate does not correspond to the legal state for several reasons.

It is widely known that there are a lot of buildings that are built but not registered; considering the area covered by the Second Municipal Court, the buildings in question are not recorded in the cadastre, either. Consequently, the titles to those buildings are also not recorded.

On the other hand, on the territory of the Second Municipal Court as a land registry court, all lots, and owners or users of those lots, have been recorded. However, the problem is that the state recorded in land registers with regard to ownership titles, i.e. the right to utilization, also does not correspond to the factual state for several reasons.

First of all, citizens can be generally assessed as undisciplined both with regard to the evidence of real estate and to the record of real-estate related rights. At issue is not only irresponsible behavior, but also that proper attention is not paid to the legal state of the property in question. For example, after the decease of one subject, the disposition of his/her property is settled inaccurately; if settled at all, this is still not followed by land registration and the divvying up of multiple ownership; furthermore, in many cases, outside of the central territory of a town, the estate is recorded as joint ownership of several co-owners; there are even cases of collective ownership. As factual divisions of the community of ownership were pursued, but such factual divisions were not followed by *de iure* divisions, each owner, i.e. user of one lot which was obtained through the division of an inherited estate, declared only what he/she obtained through division of the inherited estate. This brought about a very complicated situation that is not legal but factual.

Furthermore, municipal land for construction was nationalized under the 1958 Law, and then excluded from legal transactions under the 1968 Law on Establishment of Construction Land in Municipalities and Urban Localities. The users of that land have been allowed only to inherit it, but not to subject it to any legal transaction, waiting for the time when the land will reach utility, i.e. be taken away. It is therefore not strange that users were not motivated to regulate property relations on the lot in question since in the expropriation, i.e. exclusion procedure, the factual situation of utilization was tolerated. There is a hope that with establishment of a market, its mechanisms will regulate what has been neglected for years due to lack of motivation.

<sup>1</sup> The article contains an overview of the introductory speech held by Gordana Mihajlovic, President of the Second Municipal Court in Belgrade at the roundtable discussion entitled "Advantages and Shortcomings of General Evidence With Regard to the Existing System of Land Registers In Serbia - Legal And Economic Aspects" organized by the G17 Institute.

*The work of courts is becoming increasingly accurate*

*The factual state of real estate is not reflected by the legal state*

*Inaccuracy in recording of real estate and the related rights on the part of citizens*



It must be mentioned that municipal land for construction has been excluded from legal transactions since 1968, although factual turnover existed; even on transacted land buildings were built without construction permits, but due to the non-regulated status of the land, these buildings cannot get construction permits and hence cannot be recorded in land registers; thus, plenty of buildings of this kind are not recorded in land registers.

Related to the above mentioned is the fact that the state tacitly permitted construction of buildings without building permits, not only in cases of private interest, but also in cases when common interest was at stake, with the result that many buildings of high value have been built without a construction permit. This problem could not be resolved by dislocating evidence from the court to other state offices, but only through legalization by competent state offices of illicitly constructed buildings

One of the reasons for inaccuracy relates to the non-existence of urban planning, which should be the basis for forming urban lots out of the existing cadastre lots on which the right to priority of construction is approved as a prerequisite for the issuing of building permits as one of the first steps in lawful construction. This brought about the previously described illicit construction.

Since construction land was nationalized and excluded from legal transactions, on the occasion of land reaching utility, and depending on city planning, there were procedures of exclusion of land and its allotting to particular social subjects for the construction of residential buildings. The competence of decision-making on exclusion was assigned to municipalities, but their procedures have been accompanied with huge inaccuracies. Due to this inaccuracy, even after property relations were regulated, effective court decisions on exclusion sometimes were not passed to the land registry for forming a lot and registering its new user, on the basis of which consequent registration of the newly-constructed buildings would have followed. Without the formation of a lot, in the case of absence of building permits, land registration of buildings is not possible.

Everything presented so far was not a problem in the time of social ownership which, by its definition as everybody's and nobody's, did not require land registration. But when citizens started to buy out socially-owned flats, they felt a need for legal protection and for registration of their property, i.e. their ownership title in land registers. A transfer of property from social to private has largely updated land registers, i.e. the record of real estate rights. In spite of all the problems that citizens, i.e. owners, encountered, such problems have been overcome in practice and plenty of flats in Belgrade have been registered. There is no precise evidence how many flats have been registered, but if it were created, it could serve as proof that updating of the record of real estate rights does not depend on the work of land registry courts, but quite the opposite, on the activity of the subjects who possess a certain property right; since land registration is not compulsory (but according to the principle of free will), the interest of subjects with regard to legal security and to the need to obtain a loan obviously affect the increase in the number of registered real estates.

With regard to the formerly socially-owned flats bought out by citizens, it is worthwhile mentioning that plenty of problems emerged due to the differently marked areas of flats. This brought about a difference between construction areas, usable and actual areas noted in the contract on utilization of a flat, and the area noted in a building license. There were also cases of incorrectly marked floor plans of a flat.

This problem was overcome in such a way that the Second Municipal Court accepted a construction area that is larger than the area noted in the contract on utilization of a flat. But after these flats became objects of legal transactions, it was necessary to note their construction area in contracts in question for the sake of tax collection, i.e. calculation of taxes. Contracts on purchase of flats were not subject to sales tax.

A special problem emerged with regard to cooperatives for flat construction which did not follow a contract that stipulates their obligation to transfer ownership titles to a member of the cooperative. Another side of this problem is that the member of a cooperative often did not know who to ask for the necessary documentation for land registration. The situation was further complicated when some cooperatives went bankrupt in the meantime, without marking their legal successor after the wind-up procedure. Thus, there was no subject against whom charges could be filed in order to regulate ownership.

The companies and offices which dealt with flat construction, such as the Bureau for Construction of Belgrade, were in an unfavorable position due to the economic situation and their poor business performance and were not able to offer better legal safety. A side effect of their increasingly weak position refers to a kind of "business" of issuance of documentation necessary for land registration that developed and additionally slowed down the process of registration.

As far as the former socially-owned flats bought out by citizens were concerned, the ownership right was frequently recorded without establishing a separate E-paper - physical separation of the parts of one building or a flat was carried out on the A list, on the basis of a certificate issued by the competent municipal office, which confirmed

*The state tacitly permitted construction even at the price of violation of common interests*

*Transfer of property from social to private affected updating of land registers*



the existence of particular flats in one building; then, following construction documents and the purchase contract, registration of ownership of these separate parts was carried out.

Inaccurate evidence was also prompted by irresponsible attitudes towards state ownership. Frequent disposition of this property by subjects who held utilization rights was not attended by the proper legal documentation; consequently, a new owner who applied for land registration was not able to provide insight into the required documentation that would show the order of legal transactions. That owner was therefore prevented from justifying his/her ownership rights, i.e. existence of a *iustus titulus* necessary for obtaining a *modus aquirendi* through registration in land registers, which is the way to become a lawful holder of ownership rights.

Due to the existence and development of social ownership which we have been witness to for the past 50 years, as well as due to the existence of different economic subjects that integrated and disintegrated under the Law on Associated Labor, many of them were further integrating and disintegrating without a partition balance; this produced a complicated situation for proving legal succession of subjects in cases of transference of property rights, where that property subsequently turned into private ownership through purchase or in some other way.

Given the inaccuracy of records, we should also mention that plenty of documents which were held by state offices, such as municipal administrative offices that were in charge of issuing building and utilization permits are lost. Without this building documentation with which the ownership right for one building can be obtained under the Law on Construction of Investment Buildings, ownership rights cannot be registered.

Finally, we should not forget the fact that we were in isolation for ten years; this isolation was accompanied with absence of industrial production and economic life. Furthermore, credit operations died out due to the impossibility of taking out mortgages on real estate, without which it was not possible to restore economic activities. The crises caused by the aforementioned reasons has created an increasing need for land registration of real estate property rights.

In view of the arguments that could be made against general evidence of real estate in assigning competence for its constitution to administrative organs, it is useful to point out the following:

Under the present legislation, an ownership right over a piece of real estate is acquired through land registration, which means that registration stands as *modus aquirendi*.

During registration of ownership or any other property right to real estate, the court assesses the validity of the documents that are the basis for registration, while the procedure itself is kept under the rules of out-of-court proceeding and legal regulations of the former Land Registry Law. All in all, it should be stressed that apart from the best known ones, such as the Law on Property Relations, Law on Real Estate Transactions, Contracting Law, etc. about 80 other laws are used in assessing the validity of the required land registration. Given inadequate human resources in administrative offices, these examples are the strongest argument against dislocating the record of real estate related rights from the competence of courts. The argument that this would update the evidence of real estate rights is not valid, since updating could be achieved by the courts equally if the previous prerequisites are fulfilled, i.e. if unequal treatment of judicial and state administrative organs is removed.

As long as there is the Law on Construction Land and the Law on Constructing Buildings which requires the existence of building and utilization permits with previous formation of urban lots and acknowledgement of the right to propriety construction or the allotting of a lot to a particular subject, it will not be possible to record ownership rights to particular real estate unless aforementioned conditions are fulfilled. As the Law on Property Relations adopted a provision based on the principle that a real estate ownership right is acquired through registration in public registers, that registration is a constitutive element for acquiring ownership. Therefore, registration must be carried out by a court as an independent and qualified institution in a procedure with two equal parties and for whose pursuing this institution, which is to behave equally under equal conditions, regardless of the subject in question, will be competent. An administrative official who follows administrative procedures whose main characteristic is subordination, cannot be expected to treat equally a subject who is a private person and a subject who represents a state office. This is all the more so given that instead of division of power, there is unity of power, which existed *de iure* until 1990 and *de facto* until one year ago.

In lieu of a conclusion, let us point out that the procedure of land registration is a very interesting procedure with substantial legal challenges that are unfortunately not widely known to our lawyers and judges. Evidence of real estate property rights will be updated to the extent to which the aforementioned obstacles are removed, i.e. achieved. In any case, it will be kept well by courts not only because of quality legal experts who will work in this area it, but also because evidence is kept in a court procedure in which there is the principle of disposition of parties and the principle of material truth.

**Real estate registration in land registers as a *modus aquirendi* for acquiring ownership must be pursued by courts**

**The EU Review**

# Legislative Reform<sup>1</sup>

On June 5, 2002 President of the Commission Romano Prodi presented a set of initiatives adopted to fulfill the commitment taken by the Commission within the White Paper on European Governance which is aimed at improving the functioning of European institutions. The realization of these initiatives can start immediately since it does not require any change to the European Treaties, i.e. extension of competences of the institutions and adoption of new rules.

President Prodi said that the Community legal system is increasingly complex. Therefore all European institutions should intensify their commitment to simplify regulation in order to reduce the cost of doing business in Europe and increase legal safety for citizens. Stressing the necessity of an agreement between European institutions, President Prodi called upon other EU institutions as well as the member states to give political backing to this initiative, in particular with regard to simplification and enhanced accountability in the actions within the Union.

Namely, the reform of governance in the Union also involves the change of the way the EU institutions and national authorities work under the existing Treaty, especially concerning the way legislation and policies are prepared and implemented. The goal is to improve the way in which community legislation and policies are prepared and implemented. EU institutions must work more openly and effectively, which requires active cooperation between Parliament, the Council and Commission and must involve Member State Governments as well.

A concerted effort is essential to bring all interested parties and the entire European public into the process, making it more open and accountable.

Adapting and renewing the "Community method" and the Convention on the Future of the Union are focal points at present. The Convention is discussing new structures that will allow the enlarged EU to function effectively and democratically. This implies considerable changes to the European Treaties which lie ahead. At the same time, all EU institutions must look again at the way they currently work and start implementing reforms immediately, which is actually the subject of the proposed initiatives. Those initiatives include the following elements:

The improvement of the quality of regulations requires key changes by the European Parliament and Council, the EU's two legislative bodies. The Commission called on them to conclude an inter-institutional agreement that follows the conclusions of the 2000 Lisbon European Council, which called on Institutions and the Member States to establish a coordinated strategy for simplifying and improving the regulatory environment.

According to this agreement, the content of directives should be limited to what really needs to be carried out at the European level; it will foresee the evaluation of effects of the amendments proposed by the Parliament and the Council, which will bring about more expeditious adoption of legislation. Furthermore, the agreement should contain a work program for the various institutions in order to reduce the existing quantity of EU legislation by at least 25% before January 2005, whereby the Parliament and the Council should take adequate measures to achieve this target. These measures should contain a permanent inter-institutional coordination to follow the implementation of this plan. The Commission should report on progress in its annual report on the application of the principles of subsidiarity and proportionality.

Anyhow, the Commission will make greater use of the possibility of withdrawing legislative proposals, on the basis of clearly identifiable criteria, particularly when the Parliament and Council propose unacceptable amendments or those opposite to the principles of subsidiarity and proportionality.

The Action Plan for Better Regulation identifies improvements at various stages of the legislative cycle, from early conception to implementation. EU legislation should be written in a less complicated style, making it easier for Member State authorities to implement it. At the same time it would be more understandable to the wider public.

As of 2003 we will progressively introduce a system whereby each major policy initiative will include: an overview of consultations with stakeholders; the results of the consultation; analysis of the impact brought about by this measure; and justification of the degree of legal constraint at EU level in accordance with the principles of

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*Inter-institutional  
agreement**Work program*

<sup>1</sup> Source: <http://www.europe.eu.int>

### *More open and equitable consultations*

subsidiarity and proportionality. The Commission will set out in clear language why the initiative is needed at the European level. We will rely more on co-regulatory approaches, whereby people and organizations take on commitments and responsibilities for achieving objectives fixed by EU legislators.

Finally, some dispositions of community law need to be adjusted to the rapidly changing science and technology. A review clause was introduced with the purpose of keeping them updated.

Reforming governance requires a stronger culture of consultation and dialogue between the public and the EU Institutions. For its own work, the Commission proposes minimum standards for consultation. These standards will apply at the stage of policy-shaping to a large number of proposals before decisions are taken. The application of the standards will make clear 'who talks to whom' when new policy is being designed. It will organize better and more equitable participation of all those interested in a policy proposal. The greatest possible extent of publicity of the results of consultations and recommendations will improve accountability of all participants.

The social, economic and environmental impact will be assessed for major initiatives when policies are being devised. This new mechanism is a major leap forward in improving the quality of regulatory and policy proposals because it integrates and widens various impact assessment procedures currently used by the Commission. This new system will apply gradually from 2003 onwards. Such impact assessment will also help ensure that the European Union stays away from all matters that can be regulated more efficiently and effectively at the national level.

Fifty years of the European Coal and Steel Community (ECSC)

The European Coal and Steel Community Treaty, the starting point of the European Union as we know it today, will expire on July 23, 2002, fifty years after coming into force. To mark this occasion, the European Commission will launch a series of events to celebrate 50 years of peaceful integration of Europe. In the 1950's Europe was just recovering from World War Two. European countries were trying to emerge from the rubble and to set aside hatred and rivalries. To overcome a post-war crisis more easily, six European countries decided to pool their resources in the coal and steel sector, traditional drivers of the war machine, and to create an international organization to manage peaceful use of these resources. On 18 April 1951, in Paris, Belgium, France, Germany, Italy, Luxembourg and the Netherlands signed the European Coal and Steel Community (ECSC) Treaty. Fifty years later, on the occasion of the expiry of the Treaty, Commission President Romano Prodi said: "The Coal and Steel Community was a courageous and hugely significant leap forward for Europe. It was Europe's first step in pooling a part of each country's sovereignty for the greater good of all who took part. It was the ECSC which first established shared, supranational institutions for Europe - the basis of the EU, as we know it today and a milestone in political history. Fifty years later, Europe still leads the world in the development of its joint democratic institutions".

The European Coal and Steel Community (ECSC) has therefore played a major role in Europe's post-war history. It was the cornerstone on which the European Community (EC - Rome Treaty, 1957) and subsequently the European Union (EU Maastricht Treaty, 1992) were built. The ECSC was instrumental in fostering social progress, industrial competitiveness, and the integration of Europe. It was the first to remove all internal customs tariffs on coal and steel

Until 1967, when it merged with EC and EUROATOM, ECSC's institutional structure included the executive High Authority, the Council of Ministers, a Parliamentary Assembly, the Court of Justice, the ECSC Consultative Committee and several advisory bodies. Following the expiry of the ECSC Treaty, the field of competence of the European Economic and Social Committee will extend to the coal and steel sectors.

The European steel industry employs today 276.000 workers, down from a peak of 774.000, thirty years ago. In 1953, the production of crude steel amounted to 39 million tons, while today it reaches 159 million tons. During the seventies and eighties, the sector was affected by a severe crises and underwent radical restructuring. But during the nineties, new technologies and modern production processes were introduced, and the sector took off again. Privatization and cross-border mergers also improved the industry's competitive performance. From 1998 on, the European market has been fully absorbing the Community's steel production, and steel has to be imported from third countries. Today European steel is high quality, cheaper and cleaner, and steel research focuses on new products and sustainable production processes

The coal sector has achieved highest standards in technological development, safety and environmental performance in coal extraction and use. Nevertheless, the coal

### *Impact assessment*

industry has been confronted with an ever-increasing challenge in geological mining conditions, bringing about the restructuring of the industry, down from an output of 485 million tons (of the now 15 Member States EU 15) in 1953 to 83 million tons today. While this sector used to employ 1.860.000 in 1953, at the end of 2001 the figure was only 87.000. Therefore the Union approved a State aids both for support to coal industry and to resolving the employment problem.

With a view to the July 2002 expiry deadline, the Amsterdam European Council (June 16-17, 1997) called on the Commission to take measures for the ECSC net assets and liabilities (EUR 1.6 billion) to be transferred to overall EU budget, and to fund research activities within the steel and coal sectors. The Commission set out guidelines for the changeover in three Communications presented to the Council of Ministers. The legal basis of the changeover lies in a Protocol on the financial consequences of ECSC Treaty expiry and on the establishment and management of a "Research Fund for Coal and Steel", drafted by the Council of Ministers and annexed to the new Treaty adopted at the Nice European Council of December 7, 2000. Financial Protocol has been endorsed in February 2002 by EU Member States as an inter-governmental agreement. 72.8% of annual interests on ECSC net assets will be devoted to steel research, while 26.2% will go to coal research.

The Commission will keep shaping EU steel and coal policy, not only in the research area, but also as far as industrial policy, energy and international trade are concerned, with an eye to enlargement. Candidate countries still have big, and not yet fully restructured steel and coal sectors that need to be fully integrated in an enlarged European economy. In this respect, problems of oversized manpower will have to be addressed with regard both to the experience of the ECSC and to the need for these countries to improve the adaptability and the employability of their workers.

### ***Adoption of a modified proposal on asylum procedures***

The European Commission has adopted a modified proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. The aim of this measure is to introduce a minimum legal framework in the European Community in the short term. For this purpose, it introduces both guarantees for a fair procedure and mechanisms and tools for an efficient procedure. It is a first step towards the objective set by the European Council at Tampere, namely a common procedure. The proposal consists of minimum standards and does not require Member States to apply uniform procedures. Member States retain their national systems, provided they accept certain standards and requirements with respect to the competent authorities and the relevant procedures.

Minimum standards on asylum procedures are part of a set of measures to build the Common European Asylum System. The 1999 Tampere European Council decided that this should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status. This should be supplemented with measures or subsidiary forms of protection offering an appropriate status to any person in need of such protection. Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.

### ***Changes to the first proposal***

In order to help Member States swiftly process asylum applications and recognize applicants who are in need of protection in accordance with the Geneva Convention, the first proposal made provision for Member States to operate certain specific procedures for inadmissible and manifestly unfounded cases. Such procedures could enable Member States to decide, among other things, on "safe third country" and "safe country of origin" cases.

The modified proposal adds four new key features to this approach: additional categories of cases can be processed under an accelerated procedure as manifestly unfounded and inadmissible; a specific procedure introduces a rapid preliminary examination of subsequent applications ('repeat applications'); the possibility is introduced to maintain national procedures to decide at the border on the entry of applicants for asylum, provided certain guarantees are laid down in national legislation by the time of adoption of this proposal; finally, the possibility is introduced to detain

***More efficient  
procedures***



### *Equitable procedure*

applicants for asylum where such detention is necessary for a quick decision to be made, provided detention is limited to 2 weeks.

The proposal aims to establish a common minimum level of procedural fairness in the national systems of the Member States. This may help avoid secondary movements. Changes have been made in a number of provisions.

The modified proposal confirms the principle of an opportunity to have a personal interview for each applicant, but, upon request of the Council, lists more clearly the circumstances under which Member States can refrain from inviting an applicant for an interview (for instance, where the applicant is unfit or unable to be interviewed due to lasting circumstances beyond his control or where the applicant has, without good reasons, not complied with invitations to appear). These exceptions are based on daily practice in Member States. Moreover, the modified proposal adds the right of each applicant to have access to the transcript of the personal interview on which the decision on his/her case is based. Finally, it provides that the legal adviser shall have access to the file of his or her client applying for an asylum and may attend the personal interview with his or her client in all procedures and not just in the regular procedure.

Changes have been made to the number and type of appeal procedures. The first proposal laid down a uniform institutional model. Its basic premises were: (a) at least one appeal before a judicial body (either second or final instance); (b) at least one appeal on facts and points of law before a judicial body (either second or final instance); (c) the possibility of a further appeal to a Court of Appeal to ensure uniformity of law. Within this structure a number of modalities could be chosen.

The modified proposal simplifies the approach. A basic principle is that Member States shall ensure that applicants for asylum have the right to an effective remedy of a decision taken on their application for asylum before a court of law. This standard is in accordance with the practice of the European Court of Justice and with the Charter of Fundamental Rights of the European Union.

Moreover, a new approach is proposed on the consequences of an appeal lodged by the applicant for his right to stay in the territory or at the border of the Member State pending the outcome of his or her appeal. In the first proposal appeal had in principle suspensive effect in all cases, thus allowing the applicant to stay pending the outcome of the appeal, except in a limited number of cases listed explicitly in the proposal. In the modified proposal a distinction is introduced between the regular and the accelerated procedure. In the regular procedure appeal should have in principle suspensive effect, but Member States may derogate by virtue of laws or regulations in force on the date of adoption of this Directive. This "standstill provision" means that it is recognized that, while at the time of adoption of this proposal, differences are acceptable, but in the long run, the principle should come into practice in all Member States. In the accelerated procedure, Member States may have a non-suspensive appeal.

### *Standards of appeal procedures*

## **Economic News<sup>2</sup>**

During his visit to Russia, Franz Fischler, European Commissioner for Agriculture, Rural Development and Fisheries, praised the efforts made by the Russian people to restructure their economic system. The European Union recognizes the progress that has been made. The EU has played its part by providing 70 billion Roubles (EUR 2.4 billion) to assist the restructuring process, out of which 4.3 billion Roubles (EUR 153 million) went to the Russian farm sector. Mr. Fischer stated that in the future money could be directed usefully to support the development of institutions providing credit for investment by farmers, in particular, because more investments are key to further improve quality and productivity. He underlined the significance of trade cooperation between the EU and Russia. The bilateral trade volume has doubled in the last years from 864 billion Roubles (EUR 30 billion) in 1993 to 1.880 billion (EUR 65 billion) in 2000. Also, Russian agricultural exports to the EU have skyrocketed in the last three years, increasing by 80%. Mr. Fischler confirmed the intention to continue making an effective use of the Partnership and Cooperation Agreement (PCA) in order to contribute to developing trade and investment.

EU enlargement negotiations are progressing satisfactorily and so far candidate countries are generally meeting their commitments in the negotiations, in accordance with the agreed timetables, although further efforts are needed in a number of areas. The candidate countries need to further develop their administrative and judicial capacity

### *Closer cooperation between the EU and Russia*

<sup>2</sup> Source: <http://www.europe.eu.int>

to be able to properly implement and enforce the rules and standards of the European Union upon accession. The Commission attaches the greatest importance to ensuring that the candidate countries reach an adequate level of such a capacity by the time of accession. To help the candidate countries in their efforts, institution building and related investment have been one of the focal points of EU assistance under the PHARE program since the early 1990s. In 2001, the Commission decided that more decisive action was needed and in early 2002 for each of the negotiating countries launched an Action Plan to reinforce administrative and judicial capacity. The Action plan will be accompanied by special financial assistance of up to EUR 250 million in 2002. This brings the EU's total effort in this area to around EUR 1 billion in 2002. The Action Plans identify with each country the subsequent steps that are required to achieve an adequate level of administrative and judicial capacity. They have been agreed upon by the negotiating countries and implementation is under way. The Commission is confident that on that basis, and provided each country continues and steps up its efforts, the negotiating countries will be able to make convincing progress in the months to come. In the meantime, the Union, as well as the candidate countries, must continue to prepare itself "mentally" for enlargement. As the first accessions draw closer, public dialogue about enlargement must continue and be intensified, so as to make the risks and benefits clear, address misconceptions where they exist, and let the people know that their concerns are being taken seriously. The Commission's Enlargement Communication Strategy, which is the subject of a separate report, is a key instrument in this regard. Enlargement can only succeed if it has democratic support.

In the enlarged European Union, research and development (R&D) will be key in meeting the challenge of turning the EU into an economic powerhouse, with more and better jobs and sustainable growth. This is why European Research Commissioner Philippe Busquin today addressed the European Business Summit, the Brussels gathering of 1500 policy makers and business executives tackling the issue of entrepreneurship and sustainable development in an enlarged Europe. He invited entrepreneurs from Candidate Countries to join the debate, both for importance of R&D for innovations and economic development and because of the significance of these countries in raising EU average R&D spending to 3% of European Gross Domestic Product (GDP). These platforms will have to take off in fields such as aeronautics, energy, rail, biotechnology, health and pharmaceuticals, which should reduce competitive backwardness relative to competitors. The potential of European research, knowledge and know-how are largely underestimated. Member States, Candidate Countries and EU Institutions, policy makers and entrepreneurs, have to join forces to meet this challenge.

On March 20, 2002 for the first time the Commission asked the scientific community to say what they see as the most promising topics for cutting edge research in the Research Framework Program which is due to be launched in autumn this year. Universities, companies and research centers have sent more than 15,000 ideas for European research projects to the European Commission. More than 100,000 groups and institutions were involved in drafting the ideas; the proposed teams involve potentially several hundreds of thousands of researchers across Europe and beyond. Research Commissioner Philippe Busquin is encouraged by the massive response, stressing that it shows that the European Research Area is becoming a reality. The strong response also demonstrates that our researchers have many good ideas and that much more funding for research is needed in Europe through a coordinated investment by Member States. It is an encouraging sign as we work towards the EU's target of investing 3% of GDP in research by 2010.

In the framework of the "double profit" agreement (the agreement which provides reciprocal elimination of export subsidies and import quotas within customs quotas) between the EU and candidate countries, the European Commission adopted a proposal for a Council Regulation concerning additional liberalization of agricultural trade with Hungary. The agreement with additional duty free trade coverage of around EUR 700 million incorporates a substantial improvement in existing concessions and addresses further new concessions in the cereals, beef and dairy sectors. The deal includes granting Hungary an additional duty free tariff quota of 120,000 tons on wheat and a new duty free quota of 450,000 tons for maize. The EU benefits from duty free concessions for increased quantities for fruit and vegetables beef and poultry meat. On both sides complete liberalization was granted for sheep meat, malt and molasses. The agreement also involves a commitment from the parties to remove export subsidies for certain sectors. The proposal has now to be adopted by the Council and will most likely enter into force on 1 July 2002. Facilitating mutual farm trade before EU accession is part of

***Further development  
of administrative and  
judicial capacities of  
candidate countries is  
required***

***R & D - a key for  
turning the EU into  
an economic  
powerhouse***

***Liberalization of  
trade in agricultural  
products between the  
EU and Hungary***

### **Finished negotiations on competition policy with candidate countries**

the EU's strategy to prepare both sides for EU accession and the single market. Negotiations with the remaining Central and Eastern European Countries are currently under way.

Representatives of the Competition and State Aid Authorities from the 13 candidate countries and from the EU Commission, led by Competition Commissioner Mario Monti met in Vilnius, Lithuania, from 16 to 18 June, for their Eighth Annual Competition Conference. With the accession negotiations with several countries reaching their final phase, the conference was held at a key moment in the enlargement process. A credible competition policy and enforcement record are of crucial importance for getting the economies of the future Member States in shape and for preparing their companies for the EU's internal market. The main focus of the conference was on the progress achieved by the candidate countries in the field of anti-trust, merger regulation and State aid control in particular, and on how to best organize future co-operation between the national competition authorities and the European Commission. The Conference provided a useful opportunity for exchanging experiences and helped to identify best practices. Delegates also reflected on how to organize their future co-operation, both between authorities and with the European Commission, especially for the time after the first applicant countries will have joined the EU. After accession, the anti-trust enforcement bodies of the new Member States will be part of the emerging network of European Competition Authorities. They will be represented in all official bodies, such as the Advisory Committee on Anti-trust Issues, and participate also in the regular meetings of the Heads of Competition authorities. The conference also discussed the particular competition issues raised by energy liberalization, both in the EU and in the candidate countries, as well as the state aid policy, the ongoing merger review, etc. The 7<sup>th</sup> Annual Competition Conference was held in June 2001 in Ljubljana (Slovenia). It had focused on the Commission's assessment of the candidate countries' enforcement record in the field of competition policy that was carried out in accordance with the Commission's Enlargement Strategy Paper of November 2000. In the meantime, Cyprus concluded negotiations on competition policy, while negotiations with other candidate countries have reached a decisive stage. The Commission is currently re-evaluating the situation in those countries that have not yet been able to complete the negotiations on the competition chapter. The EU position has been that a candidate country can be ready for EU membership only if its companies and public authorities have become accustomed to competition discipline such as that of the Community well before accession. For this, it is required that the necessary legislative framework is in place, that necessary administrative capacity has been established and that the country can show a credible enforcement record.

### **Humanitarian aid to Montenegro ended**

On June 24 the Humanitarian Aid Office of the European Commission (ECHO) announced an end to its activities in Montenegro "The humanitarian emergency has now ended in Montenegro. Thanks to the assistance provided by the Humanitarian Aid Office, displaced and refugee populations, as well as local people, have been able to confront and overcome enormous difficulties. ECHO has accomplished its mission and is now making way for other European Commission instruments to take over", declared Paul Nielson, the Commissioner for Development and Humanitarian Aid. Some ten years after starting its activities in Montenegro and having managed several crises, the ECHO office in Podgorica was officially closed during a ceremony in the presence of Montenegrin Prime Minister Filip Vujanovic

ECHO intervened in Montenegro as soon as the crisis in the Balkans started in 1992. Since then, it has focused its assistance on the essential needs of displaced people, while also providing substantial aid to the host population. In 1999, during the Kosovo crises, ECHO reacted rapidly, adapting its funding to new needs created by the sudden arrival of tens of thousands of people.

Between 1992 and 1998, ECHO mobilized almost EUR 272 million for humanitarian operations in the Federal Republic of Yugoslavia. Between 1999 and 2001, Montenegro alone benefited from EUR 34.5 million in the following sectors: food (37%); preparation for winter (14%); shelter, water and sanitation (17%); health (21%); psychosocial support (5%); promotion of self-reliance (6%). Over the years, EUR 18.5 million have been allocated in 1999, EUR 9.4 million in 2000 and EUR 7.5 million in 2001, reaching the total of EUR 35.4 million. These projects were implemented by ECHO's partners: humanitarian agencies of the United Nations, non-governmental organizations, various components of the Red Cross movement.

The departure of ECHO does not mean the end of the European Union's support to Montenegro, since other instruments, better adapted to the current situation, in particular the European Agency for Reconstruction, are already operational.